

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA)
BUMPUS, RONALD BIENDSEIL, LESLIE W.)
DAVIS, III, BRETT ECKSTEIN, GLORIA)
ROGERS, RICHARD KRESBACH, ROCHELLE)
MOORE, AMY RISSEEUEW, JUDY ROBSON, JEANNE)
SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS)
THYSSEN, CINDY BARBERA, RON BOONE, VERA)
BOONE, EVANJELINA CLEERMAN, SHEILA)
COCHRAN, MAXINE HOUGH, CLARENCE JOHNSON,) Case No. 11-CV-562
RICHARD LANGE, and GLADYS MANZANET,) JPS-DPW-RMD
)
Plaintiffs,) Milwaukee, Wisconsin
)
TAMMY BALDWIN, GWENDOLYNNE MOORE and) February 23, 2012
RONALD KIND,) 8:30 a.m.
)
Intervenor-Plaintiffs,) **VOLUME IV**
) **A.M. SESSION**
v.)
)
Members of the Wisconsin Government)
Accountability Board, each only in his)
official capacity: MICHAEL BRENNAN,)
DAVID DEININGER, GERALD NICHOL, THOMAS)
CANE, THOMAS BARLAND, and TIMOTHY VOCKE,)
and KEVIN KENNEDY, Director and General)
Counsel for the Wisconsin Government)
Accountability Board,)
)
Defendants,)
)
(caption continued on next page))

TRANSCRIPT OF COURT TRIAL

BEFORE DIANE WOOD, CIRCUIT JUDGE, ROBERT DOW, JR., DISTRICT
JUDGE, and J. P. STADTMUELLER, DISTRICT JUDGE

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1 F. JAMES SENSENBRENNER, JR., THOMAS E.)
 2 PETRI, PAUL D. RYAN, JR., REID J.)
 3 RIBBLE, and SEAN P. DUFFY,)

Intervenor-Defendants.)

4 VOCES DE LA FRONTERA, INC., RAMIRO)
 5 VARA, OLGA VARA, JOSE PEREZ, and)
 6 ERICA RAMIREZ,)

Plaintiffs,)

7 v.)
 8) Case No. 11-CV-1011
) JPS-DPW-RMD

Members of the Wisconsin Government)
 9 Accountability Board, each only in his)
 10 official capacity: MICHAEL BRENNAN,)
 11 DAVID DEININGER, GERALD NICHOL, THOMAS)
 12 CANE, THOMAS BARLAND, and TIMOTHY)
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Defendants.)

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P R O C E E D I N G S

THE BAILIFF: Hear Ye, Hear Ye, Hear Ye, the United States District Court for the Eastern District of Wisconsin is now open, the Honorable Judges J. P. Stadtmueller, District Judge, Eastern District of Wisconsin, Diane P. Wood, Circuit Court Judge, United States Court of Appeals for the Seventh Circuit, and Robert M. Dow, Jr., District Judge, Northern District of Illinois, presiding.

All persons having business before this Honorable Court are admonished to draw near and give their attention for this special three-judge court convened pursuant to Title 28, United States Code, Section 2284 is now in session.

God save the United States and this Honorable Court. Please be seated and come to order.

THE CLERK: The Court calls Alvin Baldus, et al, versus Michael Brennan, et al, Case No. 11-CV-562 for a court trial. May I have the appearances, beginning with the plaintiffs.

MR. POLAND: Good morning, Your Honors. Doug Poland, Dustin Brown and Wendy Arends on behalf of the Baldus Plaintiffs.

MR. EARLE: Good morning, Your Honors. Peter Earle and Jackie Boynton on behalf of Voces de la Frontera, Ramiro Vara, Olga Vara, Jose Perez and Erica Ramirez.

MR. HASSETT: Good morning, Your Honors. Scott

1 Hassett and Jim Olson on behalf of the Intervenor Plaintiffs.

2 MS. LAZAR: Good morning, Your Honors. Assistant
3 Lazar on behalf of the members of the Wisconsin Accountability
4 Board and their director and general counsel in their official
5 capacity only, along with Attorneys Dan Kelly, Patrick Hodan
6 Colleen Fielkow and Jake Curtis.

7 MR. SHRINER: Good morning, Your Honors. Thomas L.
8 Shriner, Jr., and Kellen Kasper for the Intervenor Defendants.

9 JUDGE STADTMUELLER: Good morning. Thank you. Good
10 morning, Counsel. At the outset, on behalf of myself and Judge
11 Wood and Judge Dow, I want to express our sincere appreciation
12 for the good faith that was exercised in counsels' endeavors to
13 perhaps through an alternative means bring this litigation to a
14 suitable resolution, and while we certainly appreciate those
15 good faith efforts, unfortunately in this instance it didn't
16 work out.

17 That said, we are now ready to proceed with the
18 receipt of such testimony as may be required, particularly as
19 related to those factual matters that remain in dispute. My
20 clerk has advised me that with respect to Act 44, counsel for
21 the Intervenor Defendants and the balance of the parties have
22 apparently reached an accommodation, so at this time, Mr.
23 Shriner, I will call upon you and Mr. Hassett to the make that
24 matter of record.

25 MR. SHRINER: Your Honor, that is correct. We have

1 agreed, Mr. Olson and Mr. Hassett and I, with the concurrence
2 of the other parties involved in the challenge to Act 44, that
3 in lieu of live testimony we will submit certain matters which
4 the Court can take as if they had been testified to; some
5 things that the Court can take as true, some things that the
6 Court can take simply as testimony that it would have heard.
7 There is a stipulation being circulated, the contents of which
8 have all been agreed to, so I think it's a matter of getting it
9 on paper. We expect to be in a position to file that by noon,
10 and will not be presenting any live testimony on the subject of
11 Act 44.

12 JUDGE STADTMUELLER: All right. Thank you.
13 Mr. Hassett?

14 MR. HASSETT: I would agree with that, Your Honor,
15 and we speak for the Baldus Plaintiffs, as well.

16 JUDGE STADTMUELLER: Thank you. Mr. Poland and Mr.
17 Earle, do you agree?

18 MR. POLAND: Yes, Your Honor, we do.

19 MR. EARLE: Yes, Your Honor, we do.

20 JUDGE STADTMUELLER: Thank you. That being the case,
21 we will await your written submissions and we will move forward
22 this morning with the receipt of such testimony as I indicated
23 as may be required dealing with the balance of the issues and
24 suitable stipulations, exhibits and the like.

25 On the subject of opening statements, as counsel may

1 have gleaned from the court's comments earlier in the week, we
2 would genuinely appreciate your focusing for purposes of today
3 and tomorrow on those matters that remain in dispute,
4 specifically factual matters and specifically those exhibits
5 which support each parties' view with respect to these disputed
6 facts. Obviously, at the end of the trial you will have ample
7 opportunity in a summation to pull it all together, but we're
8 not interested this morning in hearing anyone recount either
9 the claims of the legal issues or legal authority or case
10 cites. Our purpose is to take factual testimony, including
11 expert testimony, on these issues, and hopefully we can
12 conclude all of the testimony in a matter of several hours as
13 opposed to several days. I reminded everyone earlier in the
14 week that when we tried the case back in 2002 when some of you
15 in the room were actually here during that trial, the actual
16 testimony took little more than a day and the arguments of
17 counsel took a little more than four hours. So instead of a
18 two-day trial, it was actually about a day and one-half. Now I
19 appreciate, like this case and the earlier case, you have an
20 incredible amount of written submissions and we, like the
21 earlier court, are prepared to synthesize those materials in
22 light of your written submissions, including the trial briefs
23 and motions for summary judgment and the like. So it would be
24 of enormous help to the court if we simply focused for the next
25 several hours on those matters that are truly in dispute. So I

1 will now call upon Plaintiffs' counsel for their opening, and
2 then we will move to the Intervenor Plaintiffs and then the
3 Defendants.

4 MR. POLAND: Your Honor, if I may, Doug Poland on
5 behalf of the Baldus Plaintiffs. Before we get to opening
6 statements, I have one other housekeeping matter. In the
7 interest of speeding things along, we had a witness who we
8 planned to put on live, Steve Barg, the City Administrator for
9 the City of Marshfield. We prepared a declaration. We have
10 given it to counsel, and they have agreed we can submit that by
11 declaration as opposed to calling Mr. Barg live. I wanted to
12 ask Your Honors how you prefer that we submit that testimony to
13 the court. Should it be filed via ECF?

14 JUDGE STADTMUELLER: I think that probably would be
15 preferable. There's no need to read it into the record, if
16 it's -- and the same with depositions. If you have an exhibit
17 that includes line by line of a particular witness' testimony
18 that you believe to be relevant and defense counsel have
19 included the appropriate cross-examination that deals with the
20 same subject, there's no need to read it into the trial record.

21 MR. POLAND: Thank you, Your Honor. If I may, then,
22 given what the Court has said and admonished about moving
23 quickly, the Baldus Plaintiffs will waive their opening
24 statement.

25 JUDGE STADTMUELLER: Thank you. Mr. Earle?

1 MR. EARLE: Your Honor, Peter Earle. The Voces
2 Plaintiffs will also waive their opening statement in an effort
3 to get this entire case put in by close of business on Friday.

4 JUDGE STADTMUELLER: Thank you. Mr. Kelly?

5 MS. LAZAR: Just one moment, Your Honor. I just have
6 to strike two exhibits they we were going to show, because I'm
7 taking out all Act 44 references in the opening. I will give
8 it to the trial consultant in one second.

9 Good morning. May it please the Court, I'm Assistant
10 Attorney General Maria Lazar. In preparing the opening
11 statement this morning, I took to heart the Court's admonition
12 on the first day we were here that we should get to the crux of
13 the matter and avoid all minutia. I'm just going to try to
14 point out a few points and issues that are important to our
15 case.

16 When all is said and done here, the principal concept
17 is the one that this court has been focusing upon and has been
18 trying to work with, which is that redistricting is the
19 province of the Legislature. The Legislature has the duty to
20 do the redistricting every ten years. For the first time in
21 Wisconsin since 1983, the Legislature actually did what it was
22 supposed to do and created and passed Acts 43 and 44. We won't
23 discuss Act 44 this morning. But as the Plaintiffs concede in
24 their trial briefs, these laws are presumed constitutional, and
25 that is where the case should start. And as a point of

1 reference and something we'll bring up in some of our evidence
2 later on this morning or tomorrow, the 1983 Legislature, a
3 Democratic Legislature, when it passed the redistricting plan
4 that year did it in five days starting with the hearing one
5 public hearing on Monday afternoon and the bill and law being
6 passed on Friday.

7 It's the Court's responsibility in this case to
8 determine whether the redistricting plan complies with the
9 constitution. It's not supposed to substitute its judgment
10 about the wisdom of the plan, it's just supposed to ascertain
11 whether, as you have indicated before, it passes constitutional
12 muster, not whether there could be a better plan or not whether
13 the plan or the maps met the most vocal group's wishes.

14 In point of fact here, the maps that we have we're
15 well drawn. They must comply with the constitution, we concede
16 that, but they have to be responsive to the legislative
17 judgment as to what will be best for the people of Wisconsin.
18 There's no requirement to take politics out of the
19 redistricting process, as this Court has noted I believe on
20 Tuesday.

21 The Plaintiffs have made some comments in their
22 briefs that they are concerned that our case and our defense of
23 our case will be mainly through experts, but that's because
24 they made a legal challenge as to the constitutionality of the
25 maps, and it's best addressed through expert analysis of what

1 they actually say and do.

2 It's not necessary to look behind the intent of the
3 Legislature. As Justice Scalia noted, it's almost impossible
4 to discern the intent of legislators, and I will give you a
5 quote on that later on. The court in Illinois in Committee for
6 a Fair and Balanced Map versus Illinois State Board of
7 Elections acknowledged the point by saying that you can almost
8 never determine the motives and objectives of the legislators,
9 but they said the proof, so they say, is in the pudding, and
10 the pudding is the 2011 map. That's precisely what we have in
11 this case. The proof and the issues are what are in the maps
12 and what's before this court.

13 So for the next two days the case is going to be centered on
14 Act 43, which is the legislative boundaries. The Court
15 mentioned on Tuesday morning that there were several points
16 that they were expressly interested in. One of them was the
17 political gerrymandering claim that's Count 5. This claim is
18 inapplicable for Act 43, as it is for Act 44, because as we put
19 in our briefs and pleadings which are before the Court, and I
20 will not repeat, there is no legal justiciable standard, so
21 that leaves several issues that we should address; population
22 equality, the Voting Rights Act, delayed voting or
23 disenfranchisement and general redistricting principles.

24 So going through these, after the 2010 census, the 2002
25 court-drawn map had several districts outside the legal

1 boundaries, and that's Stipulated Fact Paragraph 148 in the
2 Joint Pretrial Report. Act 43 addressed those concerns. It
3 has to be noted that State Senate and Assembly Districts are
4 not subject to the same strict standards of equal population as
5 congressional districts. Minor deviations are allowed.

6 In fact, the United States Supreme Court has never struck
7 down a case or a map with a population deviation of less than
8 9.9 percent. Here, under Act 43, it's less than one-tenth of
9 that number. The parties have stipulated, and if we can show
10 Joint Pretrial Report Paragraph 154, that the maximum deviation
11 for assembly district, 7.6 -- I mean for assembly district is
12 .76, and it's .62 for senate districts. As a point of
13 reference, the 2002 federal court-drawn assembly map, and this
14 is in Stipulated Fact Paragraph 153, that assembly map had a
15 range of 1.59 percent deviation and a senate overall deviation
16 range of .098. The Plaintiffs have the burden here. They have
17 to show this minuscule population deviation affects
18 constitutional provisions. They have not done so, and they
19 will not be able to do so today.

20 Next, the Voting Rights Act. These are the claims of Voces
21 de la Frontera and Count 6 and 7 of the Baldus Second Amended
22 Complaint. In 2002, the court drew five majority
23 African-American assembly districts, two majority
24 African-American senate districts, and one majority Latino
25 assembly district. Act 43, and this will be found in

1 stipulated Paragraph 128, Act 43 increased the majority
2 African-American assembly districts by one, so there were a
3 total of six African-American assembly districts, and increased
4 the Latino majority assembly districts by one, making two, and
5 that's shown in Stipulated Fact Paragraph 134.

6 The Plaintiffs' Voting Rights Act claim focuses upon
7 African-Americans, Native Americans and Latinos or Hispanics.
8 First, the Plaintiffs own experts in this case concede that you
9 cannot draw a seventh African-American assembly district in
10 Milwaukee no matter how hard you try, and that's shown in the
11 expert report of Kenneth Mayer at Page 25, the last paragraph,
12 the last sentence, and it is also shown in his deposition when
13 he was questioned about that expert report. That's in his
14 deposition. The question was, "Given your analysis of the six
15 African-American districts, is there a large enough population
16 in that area to create a seventh African majority-minority
17 district. Answer: I don't believe there is." Accordingly,
18 that part of the VRA claim has to fall.

19 Now, next the Plaintiffs have alleged in their complaint
20 allegations about the native American community, but they
21 haven't put on any experts, there's no reports on that, there's
22 no witnesses. That leaves only the Latino or Hispanic
23 districts as the only remaining VRA claims. Now both groups of
24 Plaintiffs argue that Act 43 should have created one
25 supermajority Latino assembly district, but the VRA does not

1 require that. If it did, then the court in 2002 would have
2 violated the VRA when it created one district, Assembly 8,
3 under Act 43.

4 The Baldus and Voces Plaintiffs will not be able to show
5 that the Latino community in Assembly Districts 8 and 9 have
6 been diluted in violation of the VRA. There will be no
7 evidence at trial that the population in Assembly District 8 is
8 insufficient under the VRA. They will not be able to show that
9 the Latino community has not been able to elect a candidate of
10 their choice in District 8. That's simply because it is not
11 true. A Latino candidate has won each and every election in
12 Assembly District 8 since 1998, and that's the best evidence we
13 can put on.

14 The Plaintiffs will then rely upon their expert's late-filed
15 report in an analysis on racial polarized voting, but they
16 cannot address how the Latino candidate has won as judge in
17 2010 and each time he ran for assembly district, and that will
18 be The Honorable Pedro Colon.

19 The Plaintiffs will not be able to show that Act 43 will
20 impair or prevent minorities from electing their chosen
21 representatives. Without that, they cannot prove a violation
22 of the VRA. Ironically, it is the Latino-based group Voces de
23 la Frontera which is seeking to reduce the number of Latino
24 assembly districts majority districts. In fact, the current
25 representative of Assembly District 8, JoCasta Zamarripa, at

1 the Joint Public Hearing for the Wisconsin Redistricting Plan
2 on July 13th, 2011 said, and this is shown in the testimony in
3 Trial Exhibit 19, that the 8th Assembly District was a
4 supermajority, this is the new one, and the 9th was trending
5 that way, and that she was, quote, "Glad to hearing that they
6 are moving from a majority to a supermajority in the 8th and
7 the 9th."

8 Our experts, which we will put on tomorrow, are renown in
9 this field. They will demonstrate that Act 43 gives minority
10 voters, in particular Latino voters, the equal opportunity to
11 participate in the political process and to elect
12 representatives of their choice in one assembly district and
13 have a greater influence in the second assembly district. They
14 will have the chance, our experts will show, that as time
15 passes, with the fact that the age and the group members of the
16 Latino group are younger, that they will grow that second
17 district and they will have a majority in it way before the
18 next census.

19 The Latino community itself is divided on this point. If
20 you look at Stipulated Fact No. 147, some members want the
21 chance to have a second seat, they want 8 and 9 as they were
22 prepared. Others, such as Voces, appear to want to make a
23 100-percent guarantee in 8 sacrificing the influence that was
24 given to them in 9. Our experts will testify that there is
25 this, as I said, the youth growth in the Latino community. So

1 the Plaintiffs in this case will not be able to establish the
2 second or the third prong of Thornburg versus Gingles.

3 So then we move to the delayed voting or disenfranchisement
4 claim. That's Claim 3. We don't believe this is applicable in
5 the case, and we can explain why. The Baldus Plaintiffs allege
6 that Act 43 disenfranchises 299,533 citizens by moving them
7 from even to odd state senate districts. Now I have to preface
8 and state that we do not take claims of delayed voting lightly,
9 and we take this very seriously. We're very conscious of the
10 Court's concern and interest in this claim, but there are
11 several facts that have to be taken into account.

12 The first is that for the first time in awhile there have
13 been recall elections in the State of Wisconsin, and a total of
14 164,843 people who reside in districts which would have
15 otherwise experienced delayed voting have already had a chance
16 to vote in 2011, and we're not even going to discuss the fact
17 that there could be more on that issue, as well. So,
18 therefore, the actual number of individuals who are impacted by
19 delayed voting is really 134,861. But, regardless of whose
20 number you accept, our number of 134,861 or their number of
21 299,533, that number alone is not a sufficient basis to
22 invalidate Act 43.

23 Now remembering that Wisconsin hasn't drawn maps as the
24 Legislature since 1983, court-drawn maps are subject to a
25 greater scrutiny than legislative-drawn maps, and they have to

1 meet higher standards. So when you look at what happened in
2 1983, it's instructive to what's happening now. In 1982 the
3 three-judge panel drew a map that would have made more than
4 500,000 people, that's more than half-a-million people, wait
5 six years to vote for state senate, and that's the AFL-CIO
6 versus Elections Board case. That figure was the basis for a
7 challenge by individuals to the court, which the court rejected
8 calling it, quote, "A house of cards that collapses when
9 exposed to even the gentle breeze of cursory analysis," and
10 said that the challenge was contrary to both Wisconsin law and
11 common sense.

12 Now later in 1983 the Wisconsin Legislature enacted a new
13 plan, a redistricting plan, and that plan moved an additional
14 173,976 people to a district where they would have had to have
15 waited to vote. Now that number, the 173,976, is what's in the
16 case and what people look at failing to take into account there
17 was already 500,000 or more that were impacted. The same
18 three-judge panel that had allowed the over one-half-million
19 found that the additional delays were impermissible and said
20 that they had no trouble sustaining a challenge. Now remember
21 it was that lower number, the 173,976 which is in the case, and
22 that's the number that the Plaintiffs in this case have
23 compared our 299 number or our lower number of 134. In reality
24 they have to add that to the half-a-million.

25 So when you look at those numbers, you can see that there

1 isn't a valid case for disenfranchisement or delayed voting
2 and, more important and most significant, when you look at the
3 Plaintiffs' briefs in this case, and a point which we have
4 raised several time in ours, the case that they rely upon has
5 been vacated by the U. S. Supreme Court in 1984. They
6 continually quote and rely upon Republican Party of Wisconsin
7 versus Election Board. That's an Eastern District of Wisconsin
8 case in 1984. That case was vacated. It has no precedential
9 value. It should not be quoted again.

10 So once the delayed voting part of this case falls, all that
11 you have left and all you can argue about are the redistricting
12 principles which the Plaintiffs attempt to tie to the Wisconsin
13 Constitution. Before we address those claims, I just want to
14 again reiterate and point out and address the Court to our
15 briefs regarding Pennhurst State School and Hospital versus
16 Halmderman and the fact that these issues cannot be addressed
17 here and that there's sovereign immunity for the State of
18 Wisconsin which has not been waived. We have addressed that in
19 the briefs; I won't cite legal quotes here.

20 Even assuming that Pennhurst does not apply, Act 43 does not
21 divide community boundaries and communities of interest
22 sufficient to rise to a level of unconstitutionality. That's
23 all that's left for the Plaintiffs, and it doesn't stand. So
24 despite all the allegations and protests of the Plaintiffs,
25 they continually fail to realize that these are not

1 constitutional standards, they are really just best practices.
2 They are things that a court will look at, if they find that a
3 constitutional standard has not been followed. Then you go
4 down and look to here. The Plaintiffs have the burden of proof
5 on constitutional issues, and they will not be able to meet
6 that, and because of that fact, there's no reason to delve
7 further down into those redistricting principles.

8 Lastly, there is a claim in this case that we think this
9 Court could dismiss this morning, and that's the last claim of
10 the Baldus complaint. It's the claim which asks the Court to
11 issue a declaration that the districts created by Act 43, if
12 upheld, will not apply to any recall or special elections
13 taking place prior to the regular elections scheduled for this
14 November 2012. There are several reasons why this claim should
15 just be dismissed.

16 First, this claim also implicates the Pennhurst situation
17 where it's asking this Court to order state agent to comply
18 with state law, which is not permissible. Take that aside.
19 There's also already a state court action filed in Waukesha
20 County which is presently before the state Supreme Court,
21 Clinard versus Brennan, and that's Case No. 11-CV-3995.
22 Actually, there's two cases there. But most significantly, the
23 Defendants do not disagree that Act 43 districts should not be
24 applied until November of 2012, if you look at Stipulated Fact
25 No. 97. Accordingly, there is no controversy here. The

1 controversy is in the state court action, which is where it
2 belongs. The jurisdiction of the federal courts to issue
3 declaratory judgments is bounded by a requirement that there be
4 a substantial controversy between the parties having adverse
5 legal interests, and that controversy has to not only be at the
6 beginning of the case, but it has to continue throughout the
7 entire case. It has to remain at all stages of review, not
8 just when the complaint was filed. Controversy doesn't exist
9 here. It never really did. That last claim should be
10 dismissed and we shouldn't spend any time or testimony on that.

11 Finally, I will end how I started. Redistricting is the
12 province of the State Legislature. That body does not have to
13 draw a map that satisfies everybody. That will be impossible,
14 because this is a political process. The map has to comply
15 with the basic laws, including equal population and the Voting
16 Rights Act. Legislation passed by the Legislature and signed
17 by the governor is presumed constitutional. Act 43 is
18 constitutional for the reasons that I have stated above.

19 Now a lot has been said by Plaintiffs, and the Court has
20 looked at the manner in which this legislative process has
21 taken place, and the speed and manner in which Act 43 and Act
22 44 were created. But we would direct the Court back to 1982
23 where our 12 days here looks relatively long compared to the
24 five days it took in 1982.

25 It also has to be remembered, though, that the process of

1 legislation is not on trial. The courts are not supposed to
2 delve into the legislative process; they probably don't even
3 want to. In fact, we just had a case in Wisconsin just this
4 year which affirmed the centuries' old standard, and that was
5 Ozanne versus Fitzgerald regarding the separation of powers. I
6 ask the court to remember that this lawsuit was filed before
7 any maps were drawn, and the evidence will show that the
8 Democrats talking points that they circulated railing against
9 the maps were circulated before the maps were introduced.

10 Simply put, quite simply, whichever maps were drawn,
11 whatever lines they made, whatever districts were created in
12 the Latino District, this suit would have been filed and we
13 would have been here today. Just as obvious, had the Democrat
14 party held the majority in the Legislature and the Governor's
15 Office, a similar legislative process would have been
16 implemented as it was in 1983. Now we do not represent the
17 Legislature, and we just have to say that neither party,
18 neither political party, could ever be accused of not acting
19 politically. But as I first noted, that is not a basis upon
20 which to find these Acts unconstitutional.

21 In summary, the lawsuits that were filed and the cases that
22 remain have no legal basis, there's no real merit, and we urge
23 the Court to tailor this case and to look at the witnesses and
24 to make sure that the testimony that's being presented to the
25 Court in this sort of shortened time frame is relevant to the

1 facts that are at issue here. Those facts are whether or not
2 the proof is in the pudding, and whether or not Act 43, and we
3 also say Act 44, are constitutional. We believe that both of
4 them are. Thank you.

5 JUDGE STADTMUELLER: Thank you, Ms. Lazar. You may
6 call your first witness.

7 MR. POLAND: Your Honor, we do have one other
8 preliminary matter before our first witness is called. We do
9 have exhibit binders for each of the members of the Court.
10 These are the exhibits that will be used with each of the
11 witnesses today. If it would be convenient for Your Honors to
12 have and you would like to have them, we have them available
13 for you.

14 JUDGE STADTMUELLER: Certainly.

15 MR. EARLE: While they are attending to that, Your
16 Honors, the Voces Plaintiffs will go first.

17 JUDGE STADTMUELLER: All right. And keep in mind the
18 admonition that I gave you on Tuesday, or it may have been
19 during the final pretrial, you need to have an order in which
20 witnesses will be examined by your colleagues and
21 cross-examined, and I would prefer that counsel having the
22 greatest interest in the cross-examination go first so that we
23 don't spend a lot of unnecessary time repeating things. I will
24 let counsel work that out.

25 MR. EARLE: Thank you, Your Honor. Our first witness

1 will be Dr. John Bartkowski. It says Steven Bartkowski, but
2 that's a typographical error. His name is John Bartkowski.
3 Your Honors, may I address the podium?

4 JUDGE STADTMUELLER: Certainly.

5 JOHN BARTKOWSKI, PhD, having been first duly sworn,
6 was examined and testified as follows:

7 THE CLERK:: Would you please state and spell your
8 full name for the court reporter.

9 THE WITNESS: John Bartkowski, B-A-R-T-K-O-W-S-K-I.

10 JUDGE STADTMUELLER: Mr. Bartkowski, there are a lot
11 of people in the courtroom who are very interested in your
12 testimony. I'd invite you to move forward and speak directly
13 into the microphone when you respond to Mr. Earle's questions.

14 DIRECT EXAMINATION

15 BY MR. EARLE:

16 Q Good morning, Dr. Bartkowski. Where are you employed?

17 A The 16th Street Community Health Center.

18 Q And what's your position there?

19 A I'm the president and CEO.

20 Q And how long have you been the president and CEO of the 16th
21 Street Community Health Center?

22 A I have been the president and CEO for 22 years, and prior to
23 that I was on the board of directors for eight years.

24 Q Okay. And, Dr. Bartkowski, would you briefly review your
25 background for the Court?

1 A My educational background?

2 Q Yes. Educational background, yes.

3 A I have a bachelor's and a master's degree in nursing and a
4 doctorate in public health.

5 Q And have you made any presentations in the area of your
6 expertise?

7 A I have given testimony in Congress around public health
8 issues. I have taught at the Medical College of Wisconsin in
9 their master's of public health program, and I regularly give
10 talks around public health and community health across the
11 country.

12 Q And would you describe the 16th Street Community Health
13 Center and what it does?

14 MS. LAZAR: I would like to make an objection, Your
15 Honor. I don't know whether this witness' testimony will be
16 relevant to the constitutionality of Act 43 or Act 44. There's
17 already a stipulated fact that's 147 that the Latino community
18 in Milwaukee is diverse. Some people in the Latino community
19 supported Act 43, some did not. Mr. Bartkowski is not an
20 expert in redistricting, and he hasn't been identified as such.
21 We don't believe that his testimony will be relevant to the
22 Court today.

23 JUDGE STADTMUELLER: Mr. Earle?

24 MR. EARLE: Your Honor, Mr. Bartkowski will be
25 testifying about the effect of Act 43 and how it has fractured

1 the Latino community, and he will be testifying about the areas
2 in the southern area of the new Act 43 Assembly District 8 and
3 the, if you will, cultural geography that's involved in this
4 redistricting and how that affects the ability of the Latino
5 community to elect its candidates of choice.

6 JUDGE STADTMUELLER: All right. Well, with that
7 understanding, although perhaps only marginally relevant, I
8 will allow Mr. Bartkowski to respond to those types of
9 questions, but in terms of all this background, I'm not sure
10 that it independently is terribly relevant, Mr. Earle.

11 MR. EARLE: Thank you, Your Honor. May I have the
12 question read back again?

13 (The last question was read.)

14 THE WITNESS: We provide primary medical care, social
15 services, health education. Basically that's it.

16 BY MR. EARLE:

17 Q How many employees do you have?

18 A 300.

19 Q Okay. And what is the -- What are the areas that you serve?

20 A We are located in the heart of the Hispanic community, and
21 we have three sites, two right in the heart of the Hispanic
22 community and one a little further south.

23 Q Okay. Drawing your attention to Exhibit 203, you can see
24 the zip codes are overlaid over Act 43 Assembly Districts 8 and
25 9. Could you use the pointer, the laser pointer there, and

1 indicate where the clinic is located?

2 A Where is the pointer?

3 Q It should be in a little box like this (indicating).

4 A Could you repeat the question?

5 Q Will you show us where the clinic -- where the clinic that
6 sees patients is located, the main location of the clinic?

7 A Right about there (indicating).

8 Q Okay. Is it currently in Assembly District 8 or 9?

9 A It was currently in 8, but that has been -- El Rey Market at
10 16th Street has been now put into 9.

11 Q Would you describe that demarcation there between 8 and 9?

12 A Yes, that would be 16th Street, Cesar Chavez Drive.

13 Q And can you tell us about that street and its significance
14 to the community?

15 A Well, back in the late '90s there was a community effort to
16 rename 16th Street to Cesar Chavez Drive because Cesar Chavez
17 had such an impact on the Latino community nationally.

18 Q And what does that street represent to the community, if you
19 know?

20 A Well, it represents the heart of the Hispanic community.

21 It's the cultural hub of the Latino community in Milwaukee.

22 It's the commercial hub, the cultural hub, of that community.

23 Q And coming back to the clinic, the 16th Street Community
24 Health Center, do you encounter citizenship issues with regards
25 to your patients?

1 A Citizenship?

2 Q Yes.

3 A Well --

4 MS. LAZAR: Your Honor, I'd make another objection on
5 relevance.

6 MR. EARLE: I will withdraw the question, Your Honor.

7 BY MR. EARLE:

8 Q Have you ever lived in the areas represented on the map in
9 front of you?

10 A I have.

11 Q Will you show us where you lived?

12 A I can give you a basic. I lived on 27th and Scott, which is
13 right around in there (indicating).

14 Q Is that located in the old 8th Assembly District?

15 A It was, yes.

16 Q Okay. And how long did you live there?

17 A I lived there about 18 years.

18 Q Okay. Where were you raised?

19 A I was raised on 17th and Howard, which is -- It's kind of
20 hard to tell, but it's down in here (indicating). It's the
21 old -- It's the Wilson Park neighborhood.

22 Q Okay. How long were you -- did you live in that area while
23 you were being raised?

24 A Until I went into the military, which was 18.

25 Q Could you describe that area for the -- Before I ask you

1 that question, does the 16th Street Community Health Center
2 provide any services in that area, the North Wilson Park area?

3 A Sure. In our Parkway Clinic, which is further south, we
4 provide a lot of services to people who live in that geographic
5 location.

6 Q And where do most of your patients come from?

7 A By far the most of our patients come from the clinic on
8 Cesar Chavez Drive.

9 Q Which is in that notch you pointed to?

10 A Right, right in there (indicating).

11 Q Okay. Now concentrating on the clinic that serves the North
12 Wilson Park area, what has been the experience of the 16th
13 Street Community Health Center with regards to the types of
14 patients that you encounter in that area?

15 MS. LAZAR: Your Honor, objection on relevance.

16 MR. EARLE: Your Honor --

17 JUDGE STADTMUELLER: Yes, Mr. Earle.

18 MR. EARLE: Your Honor, I intend to ask questions
19 about the nature of the patients served by the 16th Street
20 Community Health Center in both the 8th Assembly area, the old
21 8th Assembly area and the new area that's being added in terms
22 of issues related to compliance, the quality -- the degree to
23 which the lives of the families in these areas are organized
24 and interfere with the ability to come to doctor's appointments
25 and the like. This has an impact on the ability -- And I'd

1 like him to explain some of the background on vote turnout and
2 why vote turnout is so important in this case.

3 JUDGE STADTMUELLER: Well, again, it's bordering on
4 not being terribly relevant, so you can put a few questions to
5 the witness in this area, but I think we really need to move
6 on, Mr. Earle.

7 MR. EARLE: I will, Your Honor.

8 BY MR. EARLE:

9 Q Could you compare the patients served by 16th Street in the
10 Latino community as compared to the Wilson Park area in terms
11 of medical compliance, the observations that clinic staff has
12 had with regards to the organization and issues related to
13 those patients?

14 A Well, the patients we see at the Cesar Chavez site are more
15 vulnerable populations. They have greater needs, they are
16 younger. They are almost 100 percent Latino, and they come to
17 our site with many, many problems. At our Parkway location
18 it's a different population. It's mainly elderly, mainly White
19 people who have insurance, rather than at Cesar Chavez where
20 30 percent of the people we see are uninsured and 60 percent
21 have Medicaid. So it's a poorer population and a younger
22 population and a mainly Hispanic population.

23 Q Are there transportation issues?

24 MS. LAZAR: Your Honor, I would object again and note
25 in addition to relevance is the fact that these clinics are not

1 being moved by the new Acts, and I don't understand what the
2 relevance is as to who the patients are at one of the three or
3 four sites of this clinic.

4 MR. EARLE: Your Honor, the clinics are being moved
5 by the Act, number one, and, number two, this goes to the
6 totality of the circumstances. One of the questions before the
7 Court that is going to be a factual question is whether under
8 the totality of the circumstances, the socioeconomic burdens
9 that weigh upon the Latino community, affect their ability to
10 elect the candidates of their choice under the reconfigured
11 map. This evidence goes directly to that question.

12 JUDGE STADTMUELLER: Well, the clinics are not being
13 moved physically, correct?

14 MR. EARLE: No, they are being moved politically in
15 terms of which districts they are located in.

16 JUDGE STADTMUELLER: Well, to be very candid, Mr.
17 Earle, I think we're starting to steer the ship of state a
18 little bit off course here by getting into this. The
19 demographics of each district, to be sure, are important, but
20 where the residents obtain medical services or where they may
21 buy their sundries and groceries I think is really irrelevant.

22 MR. EARLE: Okay. Your Honor, I will move on to a
23 different subject. Thank you.

24 BY MR. EARLE:

25 Q Mr. Bartkowski -- Can we leave the exhibit up, please.

1 Focusing on the Wilson Park area where you grew up and you have
2 a clinic, the Parkview Clinic, can you describe the nature of
3 the relationship between Latinos who are moving into that area
4 and the ethnic community that is receiving that Latino
5 emigration?

6 MS. LAZAR: Objection, foundation.

7 MR. EARLE: I will lay more foundation, Your Honor.

8 JUDGE STADTMUELLER: Very well.

9 BY MR. EARLE:

10 Q As a result of the operation of the Parkview Clinic, are you
11 aware or have the staff of the 16th Street Community Health
12 Center been aware of cultural issues between the Latino
13 community and other residents of that area?

14 A Well, it's an area in transition. The Latino community is
15 moving more south and has been for about ten years. At times
16 that is difficult for the residents who currently reside there,
17 again, mainly Polish, elderly people. So there are tensions
18 that arise, and we see that in the clinic. People tend to stay
19 amongst themselves. You can see a clear demarcation when
20 people come into the clinic.

21 Q How is it that you see that? Can we put Exhibit 176 up,
22 please? I'm sorry. Wrong one. Can you describe how it is
23 that you see that in the clinic?

24 A Well, the elderly population tends to sit by themselves in
25 one end of the clinic lobby and the Latino population tends to

1 be by themselves, you know, one end of the lobby speaking
2 English, the other end of the lobby speaking Spanish.

3 MS. LAZAR: Your Honor, I would object again on
4 grounds of relevancy.

5 MR. EARLE: Your Honor, I think this is extremely
6 relevant. It goes to the question of the fact of importing
7 45 percent of a different district into what was previously a
8 cohesive political community where there is racial tension,
9 there is -- It's a transitioning neighborhood. There's a
10 cultural reaction that is operative. As we speak, we're going
11 to show additional evidence about this. I wanted Dr.
12 Bartkowski to lay some foundation in terms of the real-life
13 conditions in the communities that are being redistricted and
14 joined together here. We have basically two separate
15 communities being joined, two separate halves being joined. In
16 the totality of the circumstances we believe it will have -- it
17 will be relevant to the question of whether or not this new
18 community that's being added in will overwhelm the ability of
19 the Latino community, according to the 55 percent that's left
20 of the Latino community, to elect candidates of its choice.

21 JUDGE STADTMUELLER: With all due respect, Mr. Earle
22 if we were talking about a particular specialty school or if we
23 were talking about a compound in which new residents were being
24 forced to reside in, but this is none of these. Again, my
25 colleagues may feel differently, but I genuinely concur with

1 Ms. Lazar that we are really going quite off course here. At
2 this juncture, I'm obliged to sustain the objection.

3 MR. EARLE: Thank you, Your Honor. I have no further
4 questions for the witness. Thank you.

5 JUDGE STADTMUELLER: Does anyone have any
6 cross-examination of the witness?

7 MS. LAZAR: I just have one question, and I can -- I
8 will quickly jump up there and do it up there.

9 CROSS-EXAMINATION

10 BY MS. LAZAR:

11 Q Good morning, Mr. Bartkowski. I just wanted you to -- I
12 wanted to confirm that you indicated before that the Latino
13 population is moving more south at this point in time?

14 A Well, we have to do -- For our federal grant we have to
15 follow the migration of populations, and for the last 15 years
16 the population has been migrating slowly south, probably a
17 half-mile in the last ten years.

18 Q And what you are saying there is they are moving down from
19 where that assembly district was, correct?

20 A Right.

21 MS. LAZAR: Thank you. I have no further questions,
22 Your Honors.

23 MR. EARLE: Redirect, Your Honor. May I have
24 Exhibit 185, please?

25 REDIRECT EXAMINATION

1 BY MR. EARLE:

2 Q Dr. Bartkowski, can you take your pointer there? You
3 described, as I understood your testimony, you said the Latino
4 community is moving slowly south. Can you elaborate on that,
5 please?

6 A Well, in our studies we found that, you know, between 1990
7 to 2000 the Latino population was mainly right in that area by
8 far (indicating). Over the last 10, 15 years, it's sort of
9 gone down a little bit. It probably goes all the way to
10 Oklahoma right now. But that's about it. I mean, there are
11 certain stores, there might be a store here and there, but the
12 bulk of the Latino community is still right in that area
13 (indicating).

14 Q And as part of the study that you have conducted, did you --
15 did you arrive at any conclusions about why that movement south
16 was slow?

17 MS. LAZAR: Objection, Your Honor. There's no
18 foundation. We don't know what study this is, and this is
19 getting beyond the scope of my cross.

20 JUDGE STADTMUELLER: The last point is certainly the
21 most valid, Ms. Lazar, and the court will sustain the
22 objection.

23 MR. EARLE: Your Honor, I -- Okay. That's my last
24 question. Thank you.

25 JUDGE STADTMUELLER: Anything further, Ms. Lazar?

1 MS. LAZAR: No. No, Your Honors.

2 JUDGE STADTMUELLER: Thank you. You may step down.
3 You are now excused, Mr. Bartkowski.

4 MR. EARLE: My next witness is Pedro Colon.

5 PEDRO COLON, having been first duly sworn, was
6 examined and testified as follows:

7 THE CLERK: Mr. Colon, would you please state and
8 spell your full name for the court reporter.

9 THE WITNESS: Pedro, P-E-D-R-O, Colon, C-O-L-O-N.

10 EXAMINATION

11 BY MR. EARLE:

12 Q Judge Colon, could you inform the court what your occupation
13 is currently?

14 A I'm a judge in Milwaukee County.

15 Q Okay. And prior to your position as a judge in Milwaukee
16 County, what position did you hold?

17 A I was a State Representative for what used to be the old 8th
18 District.

19 Q Okay. How long were you a State Representative for the -- a
20 State Representative representing the 8th Assembly District?

21 A Eleven years.

22 Q Showing you Exhibit 176, could you point to the 8th Assembly
23 District that you represented, sir?

24 A My old district is right here, this area (indicating).

25 Q Do you live in that neighborhood?

1 A Yes.

2 Q How long have you lived in that neighborhood?

3 A About 20 years.

4 Q Did you ever live in the Wilson Park area?

5 MS. LAZAR: I will make the same objection that I
6 made before. I don't know that this witness' testimony is
7 relevant to the constitutionality of Act 43, which is the
8 subject of this morning's hearing. We already have a
9 stipulated fact, No. 147, which states the Latino community in
10 Milwaukee is diverse; some people in the community supported
11 Act 43 and others did not.

12 MR. EARLE: Your Honor, I will withdraw the question
13 in light of the objection and the prior rulings of the Court.

14 JUDGE STADTMUELLER: All right.

15 BY MR. EARLE:

16 Q Judge Colon, did you ever run for city attorney?

17 A Yes.

18 Q Okay. When did you run for city attorney?

19 A 2008, I believe.

20 Q If you would look at -- If we could call up Exhibit 201.

21 How did that race turn out on April 1st of 2008 when you ran
22 for city attorney?

23 A In my view, not very well.

24 Q All right.

25 A I lost.

1 Q And what was the race of your opponent?

2 A Mr. Langley is of European descent. I'm not sure where
3 from.

4 Q And your national origin, sir?

5 A I'm Puerto Rican.

6 Q And when you ran for city attorney, how long had you been
7 the assembly person representing -- assembly representative for
8 District 8?

9 A About nine years, eight years.

10 Q If we could go to Page 134 of Exhibit 201. Can you tell the
11 court what the vote totals were in that race?

12 A Well, City Attorney Langley obtained 45,627 and I obtained
13 31,332 votes.

14 Q The word "totals" are listed in that biennial report,
15 correct?

16 A It appears so, yes.

17 Q Okay. And, Judge Colon, did you ask me to prepare an
18 exhibit that isolated the wards for the Act 43 8th Assembly
19 District?

20 A Yes.

21 Q Could we go to Exhibit 1 -- 200. I'm sorry. Oh, I'm sorry.
22 199.

23 MS. LAZAR: Your Honor, we have a general objection
24 to this exhibit. It was prepared by counsel?

25 MR. EARLE: No. I'm sorry. This is the wrong

1 exhibit. 200, I mean. I'm sorry. I have these reversed.

2 MS. LAZAR: So --

3 MR. EARLE: I'm sorry.

4 JUDGE STADTMUELLER: I think what you are looking
5 for, Mr. Earle, is 202.

6 MR. EARLE: Yes, Your Honor. Thank you. 202.

7 MS. LAZAR: That's the exhibit I thought we were
8 looking at. This was prepared by counsel and not the witness?

9 MR. EARLE: It was at the request of the witness.

10 BY MR. EARLE:

11 Q Mr. Colon, is it accurate to say you asked me to prepare a
12 list of the wards in the Act 43 8th Assembly District showing
13 the totals?

14 MS. LAZAR: Your Honor, is counsel going to testify
15 that they prepared this and become a witness in this case?

16 JUDGE DOW: Is this just a summary of what's in this
17 other document? Are you going to make him produce it on the
18 stand right now?

19 MS. LAZAR: Is this a summary? I'm not sure what
20 this is, Your Honor.

21 JUDGE WOOD: It looks like a summary of what's here
22 in Exhibit 201. If you look at first line, Ward No. 63, Ward
23 No. 63 in Exhibit 201 is these numbers. Is that correct,
24 Counsel?

25 MR. EARLE: That's correct.

1 JUDGE WOOD: You could have highlighted them.

2 MR. EARLE: We could have, Your Honor, but we wanted
3 to be able to show the totals, because they are not contiguous
4 and it would be easier for the Court to see the results. It's
5 just simply a demonstrative exhibit.

6 JUDGE WOOD: There's no different information in
7 this?

8 MR. EARLE: There's no different information, Your
9 Honor. There's no interpretation, there's no different
10 information whatsoever. May I proceed?

11 JUDGE STADTMUELLER: You may.

12 MR. EARLE: Thank you.

13 BY MR. EARLE:

14 Q Mr. Colon, how did you do in terms of election results in
15 that portion of the 8th Assembly District that was retained
16 within the Act 43?

17 A In the 8th -- Well, the vote totals were 1,413, and the
18 new --

19 Q How about between you and Grant Langley in the -- that
20 portion of the 8th Assembly District that was retained?

21 A Well, you know, it's listed by ward number, and it
22 encompasses what I understand to be the new 8th and the old
23 8th, and the vote totals are at the bottom. There were 3,483
24 votes in what appears to be the new wards, and he obtained,
25 that, is Mr. Langley, City Attorney Langley, obtained 1,950 and

1 I obtained 1,553.

2 Q But I'm going to draw your attention, Mr. Colon, to the vote
3 totals at the bottom of the first box in this area right here
4 (indicating).

5 A All right.

6 Q How did you do within the old 8th Assembly District that was
7 retained within the Act 43?

8 A I did very well. I obtained 828 votes to Mr. Langley's 585.

9 Q Okay. Now I would like you to contrast that to how you did
10 in those wards that came from the old 9th Assembly District and
11 were imported into the new 8th Assembly District under Act 43,
12 the area right there (indicating).

13 A I did half as well. Mr. Langley obtained 1,250 votes and I
14 obtained 652 votes.

15 Q How did the turnout compare between those two portions of
16 the new 8th Assembly District?

17 A I can't tell from this exhibit.

18 Q Okay. Let's focus on the single ward that was imported from
19 the 19th Assembly District. How did you do in that ward? You
20 can look at your monitor, if it's easier for you.

21 A I obtained 73 votes to City Attorney Langley's 95.

22 Q So, in other words, you would have lost an election for --
23 against a non-Hispanic candidate in the new Act 43 8th Assembly
24 District, isn't that correct?

25 MS. LAZAR: Objection, leading.

1 BY MR. EARLE:

2 Q Mr. Colon, how would you --

3 MR. EARLE: I will rephrase the question, Your Honor.

4 JUDGE STADTMUELLER: Thank you.

5 BY MR. EARLE:

6 Q How would you have done in the Act 43 8th Assembly District
7 if you ran against a non-Hispanic candidate, in your view?

8 A I'm sorry. State the question again.

9 (The last question was read.)

10 MS. LAZAR: Objection, calls for speculation.

11 JUDGE STADTMUELLER: Well, what you are talking about
12 is these numbers, correct?

13 MR. EARLE: Yes, it is based on his experience,
14 electoral experience, in the exact area that's in question in
15 this case, Your Honor.

16 JUDGE STADTMUELLER: Isn't it obvious, based on these
17 numbers, he would have lost?

18 MR. EARLE: I wanted to elicit that testimony.

19 JUDGE STADTMUELLER: Everyone in the room who's
20 looking at the monitor can figure that out.

21 MR. EARLE: Thank you, Your Honor. That was my
22 point. With that, I have no further questions.

23 JUDGE STADTMUELLER: All right. Thank you.

24 Ms. Lazar, do you have any questions of the witness?

25 MS. LAZAR: Yes, I do, Your Honor.

EXAMINATION

1
2 BY MS. LAZAR:

3 Q Good morning, Your Honor.

4 A Good morning.

5 Q It's Your Honor and Your Honors. You were first elected to
6 Assembly District 8 as Assembly Representative in 1998, is that
7 correct?

8 A The fall of '98, correct.

9 Q And at that time you were the first Latino elected to the
10 Wisconsin Legislature, is that correct?

11 A As far as I know, yes.

12 Q When you served in the Assembly, did Latinos from other
13 districts come to you for help on various issues?

14 A There were times.

15 Q And when you served in the Assembly, did you work closely
16 with a African-American legislators and the African-American
17 community to promote minority interests?

18 MR. EARLE: Objection, Your Honor, scope.

19 JUDGE STADTMUELLER: That objection is overruled.
20 You may answer the question.

21 THE WITNESS: I worked with everybody in the
22 Legislature, whether African-American or not, to obtain good
23 results for everyone.

24 BY MS. LAZAR:

25 Q Okay. You ran again, Your Honor, in 2000 for representative

1 in Assembly District 8, is that correct?

2 A Correct, and subsequently until 2010, I believe, every
3 election.

4 Q 2008, but --

5 A 2008.

6 Q And in the race, though, in 2000, were there any Republican
7 or Independent challengers? There were no Republican or
8 Independent challengers that year, were there?

9 A In 2002?

10 Q No, in 2000.

11 A No.

12 Q And if you would like, there's a little folder on the desk
13 there, a little brown binder. If you want to take out Trial
14 Exhibit 1099, which is a table, Table 16 in the Joint Trial
15 Report.

16 A Yes, I see it.

17 Q At 16B that would be the description and the results from
18 your 2000 race, is that correct?

19 MR. EARLE: Objection, Your Honor, foundation.

20 THE WITNESS: I have no reason to doubt those are the
21 results.

22 MS. LAZAR: Sorry. You have to wait until the Court
23 rules on the objection.

24 JUDGE STADTMUELLER: First of all, is this one of the
25 exhibits that has been stipulated to?

1 MS. LAZAR: Table 16, if you look at the end of it,
2 there's probably a stipulation as to -- I think the whole table
3 was stipulated to.

4 JUDGE STADTMUELLER: With that knowledge, the
5 objection is overruled.

6 MS. LAZAR: If the trial consultant can go to the
7 very last page of Exhibit 1099, there will be a paragraph
8 which -- Is that the last page? We need to look at the Joint
9 Pretrial Report, but I believe this table is stipulated to.
10 The only question there might be that there was a question
11 about regarding this table was the question about the --
12 whether or not the candidates were Hispanic or Latino.

13 JUDGE WOOD: Who prepared this table?

14 MS. LAZAR: This table was prepared by counsel for
15 Defendants.

16 JUDGE DOW: Does anybody have -- It says, "Source:
17 Wisconsin Blue Book." There's one sitting in my office. Does
18 anyone have any reason to dispute these numbers?

19 MR. POLAND: Your Honor, as to that aspect of the
20 exhibit, we did stipulate. There's no objection.

21 BY MS. LAZAR:

22 Q All right. After the decennial census -- Actually, did you
23 answer that question that there were no Republican or
24 Independent challengers in 2000 against you?

25 A It appears that there weren't.

1 Q Okay.

2 A And I'm not going to dispute the Blue Book. Nobody does.

3 Q That's good to know. All right. Blue Book is good. After
4 the decennial census in 2000, the court drew a new legislative
5 map in 2002. Under that new map you were given what would be
6 considered a heavily Latino assembly district, is that correct?

7 A As I recall, without any reference to the actual maps, my
8 district in the 1992 redistricting -- my district in the 2002
9 redistricting was virtually the same. In fact, if you go back
10 in history, you can probably find that map has probably not
11 changed much due to the nature of the neighborhood and the
12 natural nature in which people interact all the way back to
13 Congressman Kleczka, not the one that retired, but his
14 grandfather.

15 Q But you will agree that your new assembly district was
16 heavily Latino, correct?

17 A It was probably more heavily Latino over time, yes.

18 Q Okay. Do you know the percentage of Latino voters in your
19 new district?

20 JUDGE WOOD: What new district?

21 THE WITNESS: You mean in the 2002 district?

22 MS. LAZAR: In 2002 district, yes.

23 THE WITNESS: You know, I would guess in the high
24 50s, maybe reaching 60.

25

1 BY MS. LAZAR:

2 Q We could show Stipulated Fact 137, which would indicate that
3 the voting age population was 58.3 percent. Does that sound
4 correct?

5 A That sounds correct. Voting age, you know, the district is
6 heavily young, due to the nature of the Latino population not
7 only in my district in this city, but in the whole nation. So
8 you are talking about -- So voting age, if you all stipulated
9 to that fact, I have no reason to dispute it.

10 Q So when you say that district is heavily young, what do you
11 mean by that?

12 A Last time I checked, I think half of my district or close to
13 half my district, the residents are anywhere under the age of
14 18.

15 Q So they will soon be 18 and able to vote?

16 A Not necessarily. That is from 0 to 18.

17 Q Okay. Following redistricting you ran again in 2002 in
18 Assembly District 8, is that correct?

19 A I'm sorry?

20 Q Following redistricting you ran again in 2002 in Assembly
21 District 8?

22 A Correct.

23 Q And if we can show again Table 16, which is Exhibit 1099,
24 16C, did you have a Republican or an Independent challenger
25 that year?

1 A No, in 2002 I didn't.

2 Q And in 2004, which is the next paragraph, 16D, were you also
3 unopposed for Assembly District 8?

4 A Yes.

5 Q And you were unopposed in 2006, Paragraph 16E?

6 A Correct.

7 Q Now in 2008 you did have primary challengers, did you not?

8 A Correct.

9 Q And --

10 A Yes.

11 Q And their names were Laura Manriquez and Jose Guzman?

12 A Yes.

13 Q Let's take Laura Manriquez. Do you know if Ms. Manriquez is
14 Latino or Hispanic?

15 A I believe so. I believe she is, yes.

16 Q And do you know if Joe Guzman is Latino or Hispanic? Just
17 if you know.

18 A I assume by his name. I have never seen the guy. I don't
19 think he even lived in the district.

20 Q Okay. All right. In 2010 you ran for Circuit County
21 Judge -- Circuit Court Judge -- of Milwaukee County Branch 18,
22 correct?

23 A Yes.

24 Q And in that election when you ran for judge, did you receive
25 substantial support from the African-American community?

1 A I received substantial support from every part of this
2 county.

3 Q Okay. And do you know if you received more than about
4 60 percent of the vote from the African-American wards?

5 A I haven't looked at the totals to that degree of certainty
6 or detail, but I have no reason to dispute it, if it's reported
7 in the outcome.

8 JUDGE STADTMUELLER: Ms. Lazar, certainly I don't
9 want to interrupt you, but like the objections you made to
10 Mr. Earle's questions, I must say that although very
11 interesting from a historical perspective, I don't think any of
12 this is going to be very helpful at all to the Court's
13 discharge of its fact finding in this process, and so I would
14 invite you to move on.

15 MS. LAZAR: And that was the last question in that
16 line. However, I would note to the Court that the issue is
17 going to be whether or not the Latino community has an equal
18 opportunity to elect a candidate of their choice, and in this
19 case Judge Colon would have been that candidate of choice, but
20 I will move on.

21 JUDGE WOOD: And I would just point out, Ms. Lazar,
22 that had you kept Assembly District 8 the same, I suppose you
23 have done a wonderful job of showing that that old district
24 could elect the Latino candidate of its choice, but I'm not
25 sure what the relevance is to the question before the Court.

1 MS. LAZAR: Well, respectfully, the relevance is our
2 experts will show that the race Judge Colon ran in Milwaukee
3 County, which is county wide, will show his support and will
4 also show the impact for what the candidates in the voting age
5 population of Hispanics is in the new Assembly Districts 8 and
6 9 to show what their impact is.

7 JUDGE WOOD: Sure, but that's not what you were
8 asking about, you were asking about 1992, 2000, 2002, 2004,
9 2006 and 2008, correct?

10 MS. LAZAR: Correct.

11 BY MS. LAZAR:

12 Q Would you say, Judge Colon, that the Latino turnout rate in
13 your race for Circuit Court Judge was low?

14 A I don't know.

15 Q If you can look at Trial Exhibit 1025. It's in your stack,
16 but they will also pull it up. I will reference to the Court
17 that this exhibit was prepared by the Plaintiffs' expert,
18 Professor Mayer on behalf of the Voces Plaintiffs. It's a
19 racial polarization study. If you go to the second page of
20 that document --

21 MR. EARLE: Your Honor, I'm going to object. I don't
22 think this witness has ever seen this document, much less had
23 an opportunity to consider its content.

24 JUDGE STADTMUELLER: Well, if that's the case, he can
25 so indicate and Ms. Lazar can move on.

1 BY MS. LAZAR:

2 Q Actually, I don't think it is the second page. Can you turn
3 back to the first page. You will see, if you go down on this
4 exhibit, you will see there's a race for Circuit Court Judge on
5 the last set of --

6 A Correct.

7 Q And it has Judge Colon?

8 A Yes, I see that.

9 Q And if you go down in the bottom column, that's six lines
10 down, is that correct? Now it's a little bit hard because you
11 have to go to the next page and then look six lines down on the
12 last column and that would still be the same race. Go all the
13 way to the bottom.

14 A So it continues from the prior one. Okay.

15 Q Right. You will see that there's a 3 percent Latino turnout
16 rate?

17 MR. EARLE: Objection, Your Honor, foundation.

18 JUDGE STADTMUELLER: First of all, Judge Colon, have
19 you ever seen this exhibit before?

20 THE WITNESS: No, I have not.

21 JUDGE STADTMUELLER: Are you comfortable --

22 THE WITNESS: Like I said, I don't know what the
23 turnout was. Turnout is, you know, turnout depends largely on
24 the race. It depends on when you are running, whether you run
25 in the fall, whether you run a non-partisan race. Turnout is

1 very difficult to gauge. I don't know.

2 MS. LAZAR: I will withdraw the question.

3 JUDGE STADTMUELLER: Ms. Lazar, with all due respect,
4 I appreciate that Dr. Mayer has done a pretty good job of
5 pulling a lot of data together, and I think this is a subject
6 that you would be wisely advised to deal with with him rather
7 than Judge Colon.

8 BY MS. LAZAR:

9 Q Judge Colon, you won that race for judge in 2010, correct?

10 A Yes, I did.

11 Q You mentioned earlier in your direct examination that you
12 challenged for city attorney against City Attorney Grant
13 Langley, is that correct?

14 A Yes.

15 Q And now City Attorney Grant Langley was the incumbent, is
16 that correct?

17 A Yes, he was the incumbent.

18 Q And he's been the incumbent for quite a number of years as
19 city years?

20 A I think he holds the record of incumbency in the City of
21 Milwaukee.

22 MS. LAZAR: Thank you. No further questions.

23 JUDGE STADTMUELLER: Thank you, Ms. Lazar.

24 MR. EARLE: Very brief redirect, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. EARLE:

2 Q Judge Colon, drawing your attention to Exhibit 200, please,
3 it's on the screen there and it's also in your binder.

4 A All right.

5 Q I want to represent to you that this demonstrates the 1992
6 8th Assembly District overlaid over the 2002 8th Assembly
7 District. Which map was in play when you were first elected in
8 1998?

9 A What do you mean "in play?"

10 Q Which map configured the district in which you ran in 1998?

11 A It was largely the same. The '98 and '92 were largely the
12 same.

13 Q Okay. So, in other words, there was a high degree of core
14 retention from one district to the next?

15 A Yes.

16 Q Okay. Was there any substantial change in terms of the core
17 population in that district between the district you ran in in
18 1998 and then when you ran for re-election in, I guess, 2002?

19 MS. LAZAR: Objection, Your Honor. This goes beyond
20 the scope of my cross.

21 JUDGE STADTMUELLER: Yes, it does.

22 MR. EARLE: I will withdraw the question, Your Honor.

23 BY MR. EARLE:

24 Q Drawing your attention to Exhibit 199, Judge Colon, the blue
25 areas represent those wards that you won during your race

1 against Grant Langley, and the tan and brown areas represent
2 the areas that Grant Langley won during that race in 2008. Can
3 you describe for us the areas that you lost in the 8th and 9th
4 Assembly Districts?

5 MS. LAZAR: I would object, again, that this goes
6 beyond my scope, Your Honor.

7 JUDGE STADTMUELLER: Yes, and the Court is
8 constrained to sustain the objection.

9 MR. EARLE: Thank you, Your Honor. No further
10 questions.

11 MS. LAZAR: No further questions.

12 JUDGE STADTMUELLER: Thank you, Judge Colon. You are
13 excused. You may call your next witness.

14 MR. EARLE: Your Honors, in light of the rulings so
15 far as of this point in the trial, this testimony will be very
16 constrained and brief.

17 JUDGE STADTMUELLER: Thank you.

18 CHRISTINE NEUMANN-ORTIZ, having been first duly
19 sworn, was examined and testified as follows:

20 THE CLERK: Ms. Neumann-Ortiz, would you please state
21 and spell your full name for the court reporter.

22 THE WITNESS: Christine Neumann-Ortiz.
23 C-H-R-I-S-T-I-N-E N-E-U-M-A-N-N hypen O-R-T-I-Z.

24 THE CLERK: Thank you.

25 THE WITNESS: Sure.

1 DIRECT EXAMINATION

2 BY MR. EARLE:

3 Q Ms. Neumann-Ortiz, would you tell the court where you work?

4 A I'm Executive Director of Voces de la Frontera.

5 Q And how long have you been in that position?

6 A I started in 2004. I was the founder, and we opened the
7 Workers Center in 2001.

8 Q Would you please describe your organization for the Court.

9 A Voces de la Frontera is a civil rights, membership-based
10 organization. We have around 3,000 members, mostly Latino and
11 majority, which live in Assembly District 8. We have worked --
12 Our primary issues are worker rights, immigration rights and
13 education rights. In 2004 we came to the realization that we
14 felt it was important to get involved in electoral work in
15 order to win on the policy issues that we were advocating for.
16 So since 2004 we have been involved in a Latino
17 get-out-the-vote program mostly in Assembly District 8 in every
18 election cycle up to the present. That runs the gamut.

19 We have done voter registration, we do a lot of work on
20 voter education, a lot of work on language access, and we were
21 part of the south side agency around election protection
22 activity in Assembly District 8, and of course voter turnout.
23 We have also worked to try to expand the pool of Latino voters
24 with a program called the New American Program, some of those
25 folks are with us here today, in helping folks in the

1 naturalization process to get lawful, permanent residence to
2 become U. S. citizens, as well as encouraging young people, who
3 are born in the United States who are children of immigrants to
4 participate in the political process when they turn 18.

5 Q Did you say how many members Voces has?

6 A Yes, I did. It was around 3,000.

7 Q Okay. And how is Voces de la Frontera governed?

8 A We have Voces de la Frontera, which is a C3 organization.
9 It is, again, membership based. We have a board and we have an
10 annual meeting at which the board members are elected and set
11 what the priority issues are for the organization. We formed a
12 C-4 organization in 2008 which allows us to do unrestricted
13 lobbying activity, as well as to be able to make endorsements.
14 We are a non-partisan organization, and we measure candidates
15 on the basis of where they stand on the issues that are
16 important to us, immigration rights being a critical issue,
17 worker rights, as well as education rights.

18 Q Did Voces de la Frontera participate in the municipal
19 redistricting in Milwaukee?

20 A Yes, we did. We were part of a Latino redistricting
21 committee. This was a coalition. It represented different
22 organizations and individuals who really represented a
23 political cross-section. We had Latino Republicans, we had
24 Latino Independent, as well as Latino Democrats who were
25 involved, and we worked together very well around the city

1 redistricting process.

2 Q And what time frame was that, did that redistricting
3 activity occur?

4 A I can't recollect now. It certainly happened right before
5 the state and some finalization of the county, so --

6 Q So is it your testimony that it was in the period leading up
7 to the state legislative redistricting?

8 A Oh, yes, absolutely.

9 Q What kind of proximity temporally?

10 A It was close.

11 Q Was Voces de la Frontera ever contacted by anybody related
12 to the legislative redistricting?

13 A To the state legislative redistricting?

14 Q Yes.

15 A No, we were not. We were very interested and involved in,
16 obviously, the entire redistricting process, because we have
17 worked so hard over the years to encourage and increase Latino
18 voter turnout.

19 Q Did anybody in Voces de la Frontera have any knowledge about
20 what was going on with regards to the legislative redistricting
21 prior to July 8th, 2011?

22 A I know that it was in sharp contrast to our experience at
23 the city level. At the city level the city made available
24 through various computers and software programs the information
25 to the public so that they could come in and look at how the

1 process would unfold. We had the ability to have numerous
2 meetings with various common council members, so it was a very
3 Democratic process. In sharp contrast, we had no information
4 and the only thing that we knew was that on a Friday it was
5 made public and then we had to rush to get some folks over
6 there on Wednesday to testify.

7 Q Okay. Was there any opportunity for Voces de la Frontera to
8 evaluate how the redistricting plan would affect the Latino
9 community on the near south side of Milwaukee between that
10 Friday and that Wednesday?

11 A No.

12 MR. KELLY: Your Honor, I object. The process by
13 which Acts 43 and 44 were adopted is not before the court.

14 JUDGE STADTMUELLER: I understand, Mr. Kelly, but
15 this is new ground and the answer will stand. You may continue
16 with your questions, Mr. Earle.

17 MR. EARLE: Thank you, Your Honor.

18 BY MR. EARLE:

19 Q I'm going to change to a slightly different subject at this
20 point. Has Voces de la Frontera worked with the legislative
21 representatives for the area in which it's located?

22 A Absolutely. We have worked very closely with State
23 Representative Pedro Colon when he served in that capacity, and
24 currently with State Representative JoCasta Zamarria. They are
25 both people that are very intimately aware of the circumstances

1 and the challenges that low wage, Latino working class families
2 face, the issues relating to immigration status both for lawful
3 permanent residents, as well as for the undocumented. They
4 have been important champions for the Latino community in the
5 State Legislature. They have been our voice, our consciousness
6 in the State Legislature in bringing that community to the
7 State Legislature.

8 Q Who else represents the Latino community in the State
9 Legislature besides the assembly person from the 8th Assembly
10 District?

11 A You mean at a larger level?

12 Q At the state senate level.

13 A At the state senate level. We are represented by State
14 Senator Tim Carpenter. He has Assembly Districts 7, 8 and 9.

15 Q And has Voces de la Frontera worked with State Senator Tim
16 carpenter?

17 A We have found it -- We have been very disappointed with the
18 representation from State Senator Carpenter. State Senator
19 Carpenter, just to give an example, in 2009 when the biennial
20 budget was being developed, two very important provisions had
21 been included there. One was in-state tuition rights for
22 immigrant youth who graduated from Wisconsin high schools and
23 want to pay their own way to go to college, as well as a driver
24 card provision, which was supported by many law enforcement
25 officials, as an important issue for the Latino and immigrant

1 community. These provisions successfully passed, actually also
2 very much with the support of State Representative Pedro Colon
3 through the Assembly process, but when it hit the State Senate
4 level, Tim Carpenter took it upon himself to really even take
5 on a public role, and he worked to get the two measures pulled
6 out of the budget. The in-state tuition budget eventually
7 prevailed, but the driver card provision was taken out. This
8 was really seen, from our point of view, and from many
9 prominent Latino leaders in the larger community who sent
10 several hundred people to meet with him in the State
11 Legislature and subsequents town halls, to really condemn his
12 action.

13 He told us that 90 percent of his constituents since 2005
14 had supported the -- or had opposed the driver card provision.
15 He also stated that Latino voters in Assembly District 8 also
16 opposed these measures. We know that in his district that a
17 majority of voters --

18 MR. KELLY: Your Honor, excuse me. I'm sorry. I
19 don't mean to be rude, but all of this testimony appears to be
20 centering around Senate District 3, which is not at issue in
21 this case.

22 JUDGE STADTMUELLER: I agree, Mr. Kelly. We need to
23 move on. What all of this underscores, of course, is that
24 representatives have very divergent constituencies, and whether
25 there is redistricting or not, we are always going to have

1 people who are supportive and those who are opposed to given
2 measures, and that's not an issue that is before the court.
3 The court is obliged to sustain the objection.

4 MR. EARLE: Thank you, Your Honor. Where I was going
5 to go with this is the area of racially inflammatory appeals by
6 White elected officials from the White or transitioning
7 portions of legislative districts that represent the Latino
8 community and result in a political dynamic that's very
9 difficult for the Latino minority with lower turnout within
10 those districts.

11 JUDGE WOOD: So is this of any relevance to the
12 question whether new Districts 8 or 9 are effective influence
13 districts?

14 MR. EARLE: Yes, Your Honor, because the evidence
15 will show that Districts 8 and 9, the areas that have been
16 added to District 8 from the old 9th and the new 9th that goes
17 farther south and is very much of a racially transitioning area
18 where there's a very reactive White community to the Latino
19 community, and those voters --

20 MR. KELLY: I object to this line of argument.

21 MR. EARLE: -- are subject to racial appeals,
22 inflammatory racial appeals.

23 MR. KELLY: Mr. Earle is now engaged in testimony.

24 MR. EARLE: I'm explaining the relevance, Your Honor.

25 MR. KELLY: And it relates to nothing that this

1 witness has been discussing.

2 JUDGE STADTMUELLER: So, again, Mr. Earle, with all
3 due respect, it's time to move on. I think the court has full
4 appreciation of the dynamic and how it will impact on these two
5 districts. But when we overlay the whole Senate district area,
6 which is apparently not in question insofar as the
7 redistricting is concerned, I mean, we're really honing in on
8 the Assembly breakup, correct?

9 MR. EARLE: Thank you, Your Honor. I will proceed
10 accordingly.

11 BY MR. EARLE:

12 Q Drawing your attention to Exhibit 176, Ms. Neumann-Ortiz, I
13 will represent to you that this is an overlay of the new 8th
14 and 9th assembly districts over the old assembly districts.
15 The old 9th is the tan-colored district in the southern part of
16 the new 8th. Do you follow there?

17 A Um-hum.

18 Q Okay. Drawing your attention to the race for city attorney
19 in 2008 of City Attorney Grant Langley versus Pedro Colon, do
20 you recall that race?

21 A Yes, I do.

22 Q Do you recall whether that race involved any racially
23 inflammatory appeals?

24 A Yes, I do, because I remember the Langley campaign accusing
25 Pedro Colon on supporting sanctuary cities, and that was never

1 an issue. I really thought that was a very inflammatory
2 allegation really intended to kind of wipe up White voters who
3 are less connected and informed about the issues that are
4 impacting the Latino community, particularly as they relate to
5 immigration issues and, so, yes, I thought it was very
6 inflammatory and catered to a White vote.

7 Q Okay. Now drawing your attention to the map in front of
8 you, the portions of the old 8th that have been retained in the
9 new 8th, you are familiar with that area, correct?

10 A The old Assembly District 8?

11 Q Yes.

12 A Yes.

13 Q Is that where most of the members of Voces live?

14 A A majority.

15 Q Drawing your attention to the area of the old 9th that's now
16 been brought in, imported into the 8th Assembly District, what,
17 if anything, does that area have in common with the Latino
18 community on the near south side?

19 A Our concern is that from our past experience in doing
20 political work around issues that matter to the Latino
21 community, our experience has been that basically by splitting
22 it up this way, you are reducing the number of Latino voters
23 who are eligible to vote because of citizenship status and
24 because of age, and that number is already low, with low voter
25 registration, low levels of participation, and now you are

1 bringing in a different constituency, voting constituency, that
2 we know from past experience has been hostile to the issues
3 that the Latino community cares about.

4 So, for instance, we know that when we worked on the -- in
5 the city redistricting process, there was, you know, in the
6 initial map that was being -- that was brought forward, it was
7 supported by two alderpeople that represent neighborhoods in
8 this area and, you know, that was a map that you had the head
9 of I believe it was the Department of Civil Rights. He had
10 retired from the Department of Civil Rights. He said that if
11 they would have passed that map, it would have violated the
12 Voting Rights Act. That is what they were supporting
13 initially. That did get voted down. Those were the
14 alderpeople in that area.

15 And just issues like bilingual education, understanding the
16 kinds of needs that the Latino community face, that it's just,
17 as was being stated earlier, there are differences in these
18 demographics, and people do vote differently and it's
19 definitely weighted in terms of having this new voting
20 constituency have higher voting representation and not having
21 the same understanding of what the issues are that the Latino
22 community has.

23 MR. EARLE: Thank you. I have no further questions.

24 JUDGE STADTMUELLER: Mr. Kelly?

25 CROSS-EXAMINATION

1 BY MR. KELLY:

2 Q Good morning, Your Honors. Good morning.

3 A Good morning.

4 Q You mentioned that there was an organization that Voces de
5 la Frontera created to do lobbying. What was the name of that
6 organization?

7 A Voces de la Frontera Action. It's a C4 non-partisan
8 organization. It does allow us to do unrestricted lobbying
9 activity, as well as to endorse candidates, and we formed it at
10 the request of the community, because when we had done election
11 work in earlier years, we did get folks in the Latino community
12 saying, "Can you please recommend who we should vote for," and
13 we would always have to say, "No, we cannot," so we did form
14 this arm.

15 Q And that's the arm that worked with the Milwaukee Latino
16 Redistricting Community?

17 A No. The redistricting process has been strictly a C3
18 activity.

19 Q Okay.

20 A Because we still do a lot of the C3 activity, such as
21 information on the photo ID requirements, things like that,
22 voter registration, language access, voter rights.

23 Q Sure. Let's do this. Can we pull up Exhibit 1178 and go to
24 the second page. Do you recognize this as the Milwaukee Latino
25 Redistricting Committee page, Ms. Neumann-Ortiz?

1 A Yes.

2 Q Okay. If you look in the paragraph under the -- where it
3 says, "Coalition Partners Include," and towards the bottom of
4 that paragraph it says, "Voces de la Frontera Action." Do you
5 see that?

6 A Yes. That is a typo. LULAC, if you see, created the
7 document, and that is inaccurate.

8 Q So is it Voces de la Frontera, the party to this case, that
9 is a partner with the Milwaukee Latino Redistricting Committee?

10 A Yes, the C3 was involved in the Redistricting Committee. It
11 was strictly a C3 activity. This document was created by
12 LULAC, one of the partners, but that's a typo.

13 Q Okay. I'd like to address a few of the statements on this
14 page with you. If you go down to the second bullet point
15 towards the bottom of the page, it says, "In Wisconsin, the
16 Latino population has grown 74 percent since the 2000 census
17 data." Do you see that?

18 A Yes.

19 Q Do you know if that's true?

20 A Yes, I know -- I don't know if it's exactly 74 percent, but
21 it's been around 70 percent statewide and 44 percent in the
22 City of Milwaukee.

23 Q Okay. Let's look at the second bullet point there -- the
24 third one. It's right under the one we looked at. It says,
25 "Milwaukee has maintained a similar number of residents,

1 according to the census, but the racial makeup has had a
2 considerable shift." Do you know if that's true?

3 A I'm not sure exactly what it's referencing, but, obviously,
4 Latinos have had the greatest ethnic population growth in this
5 last census.

6 Q And the City of Milwaukee in particular?

7 A As well.

8 Q Okay. So let's go down to the next bullet point. It says,
9 "The White population has decreased by about 50,000 residents.
10 This was offset by persons of color, most notably Asian
11 Americans grew by a 3,000, Black Americans by 15,000 and
12 Latinos by 32,000 residents." Do you see that?

13 A Yes, I do.

14 Q Does that sound about right to you?

15 A Again, not knowing the precise numbers, but, yes, I mean, I
16 would say we do know that the -- Actually, I guess I won't
17 speak to it, if I don't know 100 percent.

18 Q That's fair. Let's turn to the next page of this exhibit.
19 We will go about halfway down. There's a larger break there,
20 and it's the second bullet under that. All right. You see
21 where it says, "The U. S. Department of Justice and many civil
22 rights organizations have sued many governmental bodies that
23 violate the Voting Rights Act, and we want to ensure that our
24 city is not exposed to a suit by the DOJ?" Do you see that?

25 MR. EARLE: Your Honor, at this point I'm going to

1 object. It's gone fair afield of the direct examination. This
2 is relative to the city redistricting process and the dynamic
3 between the Latino Redistricting Committee and that process.

4 MR. KELLY: It is, Your Honor. The objection has
5 been launched by the Plaintiffs that Assembly Districts 8 and 9
6 impermissibly fractured a community of interest. This is
7 laying the foundation to look at the city aldermanic district
8 that does the same thing.

9 JUDGE STADTMUELLER: And, more significantly, while
10 it may be beyond the scope of the direct, our interest is
11 getting all the witness' testimony out in one setting so that
12 neither party has to call a witness back for their part of the
13 case, so the objection as to the question before the witness is
14 overruled.

15 MR. KELLY: Thank you, Your Honor.

16 BY MR. KELLY:

17 Q Okay. It was important to Voces de la Frontera that they
18 would have an aldermanic map that would comply with the
19 constitutional requirements, is that true?

20 A Absolutely.

21 Q You wanted to make sure that it wouldn't be subject to a
22 suit by the DOJ?

23 A Yes, and I think with limited funding, including, I mean,
24 just even, obviously, in terms of the civil rights
25 considerations would be number one, but secondly, yes, not

1 frivolous lawsuits.

2 Q And Voces de la Frontera worked with the Milwaukee Latino
3 Redistricting Community to make sure that a map would be at
4 least proposed to the city that would be able to survive a
5 constitutional challenge?

6 A Yes.

7 Q So looking down towards the bottom of that page, the second
8 bullet point from the bottom, it says, "It is in this spirit of
9 fair representation that the Latino Redistricting Committee has
10 determined key principles on the redistricting map process.
11 These principals have guided us to draw three districts in
12 which Latinos are fairly represented." Do you see that?

13 A Um-hum.

14 Q And that was your goal?

15 A I guess I would want to refresh my memory on the principles.

16 Q Well, making sure that Latinos have adequate representation
17 in the city government?

18 A Absolutely.

19 Q Okay. All right. And the last bullet point on that page
20 says, "In our proposed map, the 8th and the 12th districts will
21 have 62 and 67 percent Latino representation respectively." Do
22 you see that?

23 A That's right.

24 Q And is that Latino voting age population, is that what that
25 percentage refers to?

1 A I know that we were trying to get as close to 70 percent as
2 possible, because we recognize that to have an effective Latino
3 voting block you need to have U. S. citizens, they need to be
4 18-years-old, so those are, you know, plus the other factors,
5 but citizenship and age are huge factors in our -- in the
6 Latino population.

7 Q So the districts you proposed, however, were 62 and
8 67 percent, right?

9 A I can't recollect exactly now. I haven't looked at it most
10 recently, but I do know we were shooting for as close to
11 70 percent as possible.

12 Q Okay. Let's turn to the first page of that exhibit. Ms.
13 Neumann-Ortiz, do you recognize this as the aldermanic district
14 map that the Latino Redistricting Community proposed?

15 A I believe this was one of the maps that we proposed, if my
16 memory serves me correct. Yes, we were trying to get to two
17 supermajorities and a third influence district that accounted
18 for all of the growth.

19 Q Can you locate on there for me Aldermanic Districts 8 and 12
20 as they were proposed on this map?

21 A I think this is 8 (indicating).

22 Q If you wouldn't mind using a laser pointer so the court can
23 be able to follow along with you.

24 A Eight and 12.

25 Q Can you shine it up on the screen?

1 A Twelve, 8.

2 Q That's 8, and then 12 is where?

3 A (Indicating.)

4 Q There was some testimony earlier this morning about the
5 significance of 16th Street, also known as Cesar Chavez Drive.
6 Can you locate that on the map for me?

7 A It goes exactly down Cesar Chavez, 16th Street, and I really
8 can't see perfectly here to indicate that.

9 Q Is it your understanding that the upper, say, half of the
10 divide between Aldermanic Districts 8 and 12, that that's
11 approximately 16th Street there?

12 A I'd have to look at a closer map with more detail.

13 Q From your personal knowledge in working on the -- in working
14 with the Latino Redistricting Community, do you understand that
15 the map that was proposed divided Aldermanic Districts 8 and 12
16 at least in the upper half along 16th Street?

17 A I don't know. I do know that an important consideration,
18 maybe the greatest consideration, from all of us was getting to
19 the as high as possible to the 70 percent citizenship number,
20 for total Latino population in order to have a critical Latino
21 voting block.

22 Q Sure. What I want to focus on here for a moment is the
23 communities of interest aspect that we have heard about this
24 morning. Do you know approximately on this map where Dr.
25 Bartkowski's clinics would be located?

1 A Yes, for me I'd have to look at a closer map. I can tell
2 you in terms of the community of interest, if this speaks in
3 part to that.

4 Q Well, what I'm interested in is there's a business community
5 on the near south side of Milwaukee, is that right?

6 A The south side community is very rich in terms of -- I mean
7 not rich, it's actually one of the lowest income -- Assembly
8 District 8 is actually one of the lowest income areas, you
9 know, it's a very low income, low wage worker Latino community
10 by and large, and you have a lot of entrepreneurship. In that
11 sense there's a lot of wealth.

12 Q The near south side of Milwaukee, perhaps around National
13 Avenue?

14 A Yes.

15 Q And Aldermanic Districts 8 and 12 as proposed by the Latino
16 Redistricting Community have a part of that in one district and
17 part in another, is that right?

18 A Yes. I don't want to speak, if I'm not 100 percent sure,
19 so, I mean, I'd have to see here how far -- I mean, National
20 runs this way (indicating).

21 Q Can you tell me of your own personal knowledge if the
22 aldermanic districts proposed by the Latino Redistricting
23 Community had part of the hub of the economic Latino community
24 partly in one district and partly in the other?

25 A I do know that we definitely considered -- we thought it was

1 a very important criteria that, you know, where you had kind of
2 a living economic area, that that be one of the factors that
3 definitely, obviously, be considered in terms of trying to
4 preserve that, because, obviously, it's for elected officials
5 to be able to advocate and promote. So that was one of the
6 strong factors we included, as well, besides the voting -- an
7 effective Latino voting block.

8 Q Let's take a look at Exhibit 1179.

9 MR. EARLE: What was the last one? I missed it.

10 MR. KELLY: That was 1178.

11 BY MR. KELLY:

12 Q All right. Ms. Neumann-Ortiz, do you recognize Exhibit 1179
13 as the aldermanic district map that was actually passed by the
14 City of Milwaukee?

15 A Yes.

16 Q And the Latino Redistricting Community was satisfied with
17 Aldermanic Districts 8 and 12?

18 A Yes, we were. It was not our ideal map, but we were.

19 Q But it was good enough?

20 A We believed that the importance of a supermajority was
21 fundamental to protecting Latino voting rights.

22 Q Is there any possibility we can put 1178 and 1179 up next to
23 each other? All right. Let's focus in on Aldermanic Districts
24 8 and 12 and go through them. So the aldermanic district
25 mapped proposed by the Latino Redistricting Committee is on the

1 left, the actual aldermanic map is on the right, is that
2 correct?

3 A That's right.

4 Q And do you see that in the upper part of the actual
5 aldermanic map that the division between 8 and 12 follows very
6 closely the division proposed by the Latino Redistricting
7 Community?

8 A Yes.

9 Q Thank you. Ms. Neumann-Ortiz, you expressed some concern
10 about the change in Latino population of Assembly Districts 8
11 and 9 from before the adoption of Act 43 to now?

12 A Yes.

13 Q Do you know what the percentage of Latino voting age
14 population existed in Assembly District 8 in 2002?

15 A Not off the top of my head.

16 Q Do you know if the percentage of Latino voting age
17 population in the new Assembly District 8 is higher or lower
18 than in 2002?

19 A Our biggest concern is that you cannot look -- When you are
20 talking about the Latino community, and this is someone who
21 maybe doesn't work in the Latino community would not -- In our
22 area. I don't want to generalize for the country, but in our
23 area you cannot just look at Latino voting age as a factor.
24 You have to look at --

25 Q There are other factors?

1 A Absolutely.

2 Q But what I'm interested in --

3 MR. EARLE: Your Honor, I object because the witness
4 was interrupted.

5 MR. KELLY: Yes, because -- I asked a very pointed
6 question.

7 MR. EARLE: I'm directing my objection to the court,
8 Mr. Kelly.

9 JUDGE STADTMUELLER: Ms. Neumann-Ortiz, did you have
10 Mr. Kelly's full question in mind when you answered?

11 THE WITNESS: Your question again?

12 MR. KELLY: Let me try that again.

13 BY MR. KELLY:

14 Q Do you know if the Latino voting age population percentage
15 was higher in the new Act 43 Assembly District 8 than it was in
16 2002? Was it higher or lower?

17 A Oh. Since I can't recollect off the top of my head, I,
18 again, don't want to answer.

19 Q Would that be significant? If the new Assembly District 8
20 had a higher Latino age population than Assembly District 8 had
21 in 2002, would that be significant to you?

22 A Well, I guess the numbers that I would be looking at are not
23 really going back that far. I mean, it would be looking at,
24 you know, from my experience as an organization where we have
25 done neighborhood-based canvassing, we have worked Assembly

1 District 8 and every ward reaching out to Latino voters, we
2 know that, you know, that it is important, and that is where
3 the Latino Redistricting Committee emphasized the importance of
4 not just getting to a, you know, as the map is being redrawn to
5 account for the tremendous growth of not just saying, you know,
6 it's enough to get to a majority Latino voting age population.
7 We know that because there are many factors that prevent Latino
8 voters from increasing their participation. One of them I
9 mentioned earlier was, you know, in Assembly District 8, the
10 current one, I think in 2006 there was a study that said
11 26 percent of lawful permanent residents are concentrated in
12 Assembly District 8, the old map. That's a significant number.
13 That was around 10,500 people.

14 You also have poverty. It's a very high mobile area. One
15 of the challenges for us has been sustaining a relationship
16 with voters, because they are always moving. So there's
17 language barriers in terms of new citizens, an unfamiliarity
18 with the voting process. So I guess what I'm saying is that
19 growth is good, growth is good, but when you are dealing with
20 the community that we have been working with, and this was a
21 recognition of Latino Redistricting Committee, you know, we
22 would like to see a map that can guarantee -- can ensure that
23 we can continue to elect a candidate of our choice that will
24 continue to represent us in the State Legislature.

25 We are very concerned that in diluting that Latino voting

1 block and bringing in a voting constituency that has higher
2 rates of voter registration, has higher rates of voter
3 participation and that for now at least is, you know, doesn't
4 understand in many ways and is hostile to some of the issues
5 that are fundamental civil rights issue for the Latino
6 community, that that is a real danger.

7 Q Sure. I understand the --

8 MR. EARLE: Your Honor, Mr. Kelly is cutting off the
9 witness mid-sentence.

10 MR. KELLY: I am, and I apologize, but it is going
11 fairly far afield of the question I asked.

12 JUDGE STADTMUELLER: Sure. I appreciate both
13 parties' concerns in that regard. We have reached that point
14 where we're going to take our morning recess. As counsel is
15 aware, we're going to go for two hours at a time and give our
16 court reporters a break, so we will stand in recess for 15
17 minutes.

18 THE BAILIFF: All rise.

19 (A recess wad taken.)

20 THE BAILIFF: All rise. The court is now in session.
21 The Honorable Judges J. P. Stadtmueller, Diane P. Wood and
22 Robert M. Dow, Jr., presiding. Please be seated and come to
23 order.

24 JUDGE STADTMUELLER: Mr. Kelly, you may continue with
25 your questions.

1 MR. KELLY: Thank you, Your Honor.

2 BY MR. KELLY:

3 Q Ms. Neumann-Ortiz, I'd like to take a step back to a comment
4 you made just a little bit earlier this morning when we were
5 talking about growth from 2002 to the present. You mentioned
6 that growth is a good thing, yes?

7 A Yes.

8 Q All right. And we were talking about growth of the Hispanic
9 community in Assembly Districts 8 and 9?

10 A That's right.

11 Q All right. Now that's a good thing because that gives more
12 of an opportunity for the Latino community to elect a candidate
13 of their choice?

14 A Yes, it does.

15 Q So if we were to -- and I won't ask you to validate any
16 numbers here, but if we were able to show you that the
17 percentage of Latino voters in Assembly District 8 as created
18 by Act 43 is higher than it was in 2002, that would be a good
19 thing, wouldn't it?

20 A Not necessarily. What we are looking for, what we are
21 concerned with with the map that Assembly Act 43 has created is
22 that it's splitting the largest -- the largest concentration of
23 the Latino population and within it Latino voters directly down
24 the middle. So it's cutting it in half as opposed to
25 acknowledging that that growth is there and where it's most

1 concentrated in order to ensure the growth of that Latino
2 voting block. That's been one of our big goals.

3 Q But if the Hispanic population percentage in Assembly
4 District 8 under Act 43 is higher than it was in 2002, that
5 wouldn't be a bad thing, would it?

6 A I guess I would disagree with the way the question is being
7 posed.

8 Q It might be a bad thing?

9 A We believe that the way the map is being drawn is a bad
10 thing because it's not bringing in the -- it's not bringing
11 in -- concentrating the Latino population into getting up to
12 that, as we advocated at the city level and which prevailed,
13 which was getting as close to a 70 percent population in order
14 to ensure that we could elect a candidate of our choice that
15 could bring that voice to the State Legislature.

16 Q And I understand that you have a different perspective on
17 how you would like the map to be drawn, but I'm focusing on a
18 very narrow question, and that question is is it good or bad to
19 have the Hispanic population grow in a district over time?

20 A I mean, the bottom line is how the lines are being drawn.
21 Growth is good; how the political boundaries are drawn is
22 everything.

23 Q That's more important than the percentage of the Hispanic
24 community in a given district?

25 A Political lines, how they are drawn, definitely can and we

1 believe in Act 43 does disenfranchise Latino voters.

2 Q So if we were to create a Latino district, let's call it 8,
3 and we draw the lines essentially the same way north to south,
4 but it had an even higher population, that would be a bad thing
5 because the lines aren't where you wanted them to be?

6 A I didn't understand the question.

7 MR. EARLE: I will object to the hypothetical as
8 being, I think, incomplete. I mean, I'm not sure what is in
9 this hypothetical district.

10 MR. KELLY: The hypothetical district --

11 MR. EARLE: My objection is to the judge, Mr. Kelly.

12 JUDGE STADTMUELLER: I think the witness has
13 addressed Mr. Kelly's question with what she believed to be an
14 appropriate answer, and that is there are considerations beyond
15 where the lines are drawn that need to be factored into the
16 equation. Beyond that, if you have some further questions,
17 whether on that or other subjects, Mr. Kelly, proceed.

18 MR. KELLY: Fair enough. Thank you, Your Honor.

19 BY MR. KELLY:

20 Q So you are not especially concerned about the numbers, you
21 are more concerned about where the lines are actually drawn?

22 A Both. The demographic growth of the Latino community should
23 be reflected in a map where the -- that growth also brings with
24 it political representation, and the way Act 43 is being done
25 right now, because of the challenges of issues around obtaining

1 the Latino voting block, because of citizenship, because of age
2 and going so far south that you are bringing in a constituency,
3 a voting constituency that we know has been hostile to a lot of
4 the issues that the Latino community desperately needs and
5 wants to have addressed, and that, yeah, that that -- the way
6 that map is being drawn that we are not gaining political
7 power, but it's actually being diminished at a time of
8 significant population growth.

9 Q Well, let's look at it this way. Let's turn to Exhibit 1061
10 at Page 2, if you would. Now these are the responses to some
11 interrogatories that the Government Accountability Board sent
12 to your organization, Voces de la Frontera. In Interrogatory
13 No. 7, if we could look at the question, it asks you to please
14 identify all facts that support any claim in your Complaint
15 that Wisconsin Act 43 violates any state or federal statute
16 and/or state or federal constitutional provision. Do you see
17 that?

18 A I see it.

19 Q Okay. And let's go to the third paragraph in the Answer
20 that begins, "The data from the April 10." Do you see there
21 where it says, "The data from the April 2010 census indicates
22 the area of most rapid growth in Milwaukee's Latino community
23 has been on the City's near south side centered in the area of
24 the 8th and 9th assembly districts?" Do you see that?

25 A Yes.

1 Q Do you agree that that's true? That is your answer.

2 A Yes. Yes. I mean, yes, the Latino population is
3 concentrated in the 8th and in the 9th.

4 Q Okay. And before Act 43 the orientation of Assembly
5 Districts 8 and 9 where 8 was to the north, 9 was to the south?

6 A Um-hum.

7 Q So when we say that the area of most rapid growth of
8 Milwaukee's Latino community has been on the City's near south
9 side centered in the area of the 8th and 9th assembly
10 districts, that growth is happening in the southern part of
11 that, as well?

12 A I think our problem with Act 43 --

13 Q I'm sorry. Ms. Neumann-Ortiz --

14 A How far south it goes. I mean, you are suggesting south,
15 that there's movement to the south, and, yes, there is movement
16 to the south, definitely, but not -- not as far south as is
17 being proposed in -- as Act 43 has in that it's actually
18 bringing in -- it's diluting the Latino voting block because of
19 how far south it goes.

20 Q Were you in the courtroom when Dr. Bartkowski was
21 testifying?

22 A Yes, I was.

23 Q Do you recall him testifying that the Hispanic community is
24 moving south?

25 A I did. I remember agreeing with his observation that it's a

1 very slow growth, and that it's just very -- just below
2 Assembly District 8, maybe half-a-mile below, and not to the
3 extent that's being proposed in Act 43.

4 Q Sure. But it is moving south?

5 A At a very slow rate.

6 MR. KELLY: Thank you.

7 JUDGE STADTMUELLER: Thank you, Mr. Kelly. Mr.
8 Earle, anything further?

9 MR. EARLE: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. EARLE:

12 Q Your cross-examination began with an inquiry about the
13 Latino Redistricting Committee in which Voces de la Frontera
14 participated. Do you recall that?

15 A Yes, I do.

16 Q Did anybody from the Legislature or anybody involved with
17 the legislative redistricting process contact anybody within
18 the Latino Redistricting Committee, to your knowledge, for
19 input?

20 A To my knowledge, no.

21 Q Okay. You were asked a series of questions about the
22 aldermanic districts. Do you recall that?

23 A Yes.

24 Q Okay. And in particular the configuration of Aldermanic
25 District 12 and Aldermanic District 8?

1 A Yes.

2 Q Okay. Do you know offhand the approximate size of an
3 aldermanic district in the City of Milwaukee? I know I'm
4 testing you here.

5 A I cannot -- I don't want to guess exactly.

6 Q Okay. Do you know whether the Latino community had grown to
7 a point where it could reasonably be argued that it was large
8 enough to constitute effective voting majorities in two
9 aldermanic districts?

10 A Absolutely. That was our case, and we had also support from
11 various experts.

12 Q Okay. And the lines that you see now on the screen, and I
13 think that's Exhibit 11, in particular the one that was
14 actually passed, is that 1178? 79? Yes, 1179. Do those two
15 aldermanic districts reasonably encompass the Latino community
16 where the population is concentrated?

17 A Absolutely.

18 Q Does Act 43 go further south than Aldermanic District 12?

19 A Yes, it does. It goes as far down as Howard.

20 Q Okay. And if we could call up Exhibit 237. Do you know
21 what the southern boundary of the 12th Aldermanic District is?

22 A More or less it's on Cleveland.

23 Q Okay. Could we enlarge this exhibit so that -- Can you
24 point to more or less -- Can you see where Cleveland is on that
25 map, if we could enlarge it a little bit, further south?

1 A Okay.

2 Q A little bit further. Okay. There you go.

3 A I can't really read too well there. Cleveland. There it
4 is.

5 Q It's by the line.

6 A Yes, there it is.

7 Q Okay. And how far would you have to go south to get to
8 Howard?

9 A A long ways. Again, I haven't checked the exact mileage,
10 but I have driven it and I know it's a long way.

11 Q I will represent to you that the darker red represents
12 Latino concentrations and the yellow represents substantially
13 diminished Latino concentrations. How much yellow would we
14 have to pass over to get to Howard?

15 A I haven't checked the exact miles, but if you could scroll
16 down farther, it's substantial. It's Howard. Howard is the
17 end.

18 Q Okay. All right.

19 A So it continues much, much farther south, yes.

20 Q Now Mr. Kelly asked you a series of questions about whether
21 it was a good thing that there were more Latinos of voting age
22 in 2012 on Act 43's 8th Assembly District than there were in
23 the 2002 Assembly District 8 when it was first drawn.

24 A Yes.

25 Q Okay. Do you know how the current 8th Assembly District --

1 Strike that. Let me rephrase that question.

2 Do you know how District 8 before Act 43 fared in terms of
3 Latino concentration on census day?

4 A Oh, well I know that --

5 Q This is before the redistricting.

6 A Before the redistricting. I know we have focused our
7 activity, almost all of our get-out-the-vote efforts in the
8 Latino community nearly exclusively in Assembly District 8
9 because it has the highest concentration of Latinos of any
10 assembly district in the state.

11 Q Was the concentration of Latinos in Assembly District 8
12 reduced by Act 43?

13 A Absolutely.

14 MR. EARLE: No further questions, Your Honor.

15 JUDGE STADTMUELLER: Anything further, Mr. Kelly?

16 MR. KELLY: Nothing further, Your Honor.

17 JUDGE STADTMUELLER: All right. Thank you, Ms.

18 Neumann-Ortiz. You are excused. You may step down. You may
19 call your next witness, Counsel.

20 MR. EARLE: Professor Ken Mayer.

21 KENNETH MAYER, having been first duly sworn, was
22 examined and testified as follows:

23 THE CLERK:: Mr. Mayer, would you please state and
24 spell your full name for the court reporter.

25 THE WITNESS: My name is Kenneth R. Mayer. Last name

1 is M-A-Y-E-R.

2 DIRECT EXAMINATION

3 BY MR. EARLE:

4 Q Professor Mayer, what do you do for a living?

5 A I'm a professor of political science at the University
6 Wisconsin-Madison.

7 Q Okay. Showing you what's been marked as Exhibit 55, do you
8 have it there?

9 A Yes.

10 Q Okay. Can you identify it, please?

11 A This is my CV taken from my expert report produced in this
12 case.

13 Q You mean your CV is attached to Exhibit 55?

14 A Yes.

15 Q Okay?

16 A Exhibit 55 is my expert report.

17 Q Okay. And drawing your attention to Exhibit 1 of
18 Exhibit 55?

19 A This is my CV.

20 Q Okay. Is that CV up-to-date?

21 A There are a couple things missing, but it's largely
22 up-to-date.

23 Q Okay. I don't want to go through the CV in too much detail,
24 but I'd like to kind of go over a few things to allow the court
25 to be introduced to your qualifications, if you will. Could

1 you hit some of the highlights of your career?

2 A I received my PhD from Yale university in 1988. My
3 bachelor's is from the University of California-San Diego where
4 I majored in political science and minored in applied
5 mathematics. I have been at the University of Wisconsin since
6 1989. In 2006 I was named Fulbright Distinguished Chair at the
7 Australian National University, and those are what I consider
8 the highlights.

9 Q Okay. What courses do you teach, Professor Mayer?

10 A I teach courses in American government on the presidency,
11 campaign finance, electoral systems, the introductory course in
12 American politics, courses on election law and occasionally
13 courses on Congress.

14 Q Do you have any graduate students?

15 A Yes, I do. I supervise -- or have supervised graduate
16 students either as a member of the Dissertation Committee or as
17 Chair of the Dissertation Committee.

18 Q Okay. Have you published in peer-reviewed scholarly
19 journals?

20 A Yes, I have.

21 Q Could you describe some of those for us, please?

22 A The major peer-reviewed journals that I have published in
23 are the American Journal of Political Science, the Journal of
24 Politics, the Election Law Journal, Congress and the
25 Presidency, PS, Political Science and Politics, Presidential

1 Studies Quarterly, Legislative Studies Quarterly, and a number
2 of peer-reviewed books and book chapters.

3 Q Have you published in any Law Review Journals?

4 A Yes, I have. I have an article on campaign finance that was
5 published in the University of Richmond Law Review in 2006, and
6 an article on Australian constitutional history that was
7 published in the UCLA Pacific Basin Law Journal.

8 Q Okay. Have you done any consulting work?

9 A Yes.

10 Q Before I ask you that question, let me ask you this. Has
11 redistricting played a role in any of your published articles?

12 A Yes. The primary avenue for considering redistricting in my
13 published work has been as a component of my research on
14 campaign finance where my particular interest is in -- is on
15 how various regulatory regimes affect the competitiveness of
16 elections, and it's necessary to examine the effect of
17 redistricting, because that has a very clear effect on
18 electoral competitiveness.

19 Q Okay. Can you describe your consulting work in the areas
20 relevant to this redistricting?

21 A In 1992 I was an expert witness before this court in the
22 Baumgart case.

23 Q Was your testimony received in that case?

24 A Yes, it was.

25 Q Okay.

1 A I have served as an expert witness in a campaign finance
2 case in Arizona, which at the time that I worked on it was
3 called McComis, et al, versus Brewer, et al. By the time it
4 got to the Supreme Court, the name had changed. More recently
5 I was an expert witness for the City of Kenosha in the County
6 of Kenosha versus City of Kenosha, which was a redistricting
7 dispute between the city and the county. I served as an expert
8 consultant for Voces de la Frontera in the Milwaukee Aldermanic
9 District in 2011. I have also served as a consultant -- expert
10 consultant -- for the Prosser for Supreme Court Committee
11 advising them on issues related to the recount.

12 Q Okay. Have you been appointed to any committees that have
13 anything to do with redistricting?

14 A Yes. In 2003 Shirley Abrahamson, the Chief Justice of the
15 Wisconsin Supreme Court, appointed me to a committee on
16 redistricting on which I served as co-chair between 2003 and
17 2009. We were charged with creating procedures that the State
18 Courts would use in the event that the 2010 census and
19 subsequent redistricting process triggered litigation.

20 Q Okay. And what kinds of work did that committee do
21 substantively?

22 A Well, working within the bounds of what we read to be the
23 authority that we had, we created a commission of retired
24 appellate court judges who would serve as sort of a special
25 master to the court in creating a redistricting map, but only

1 in the event that the Legislature had failed to act by a
2 specific point in time.

3 Q Have you done any consulting work for the Government
4 Accountability Board?

5 A Yes. Since 2008 I and several of my colleagues at the UW
6 have been asked by the Government Accountability Board to
7 advise and consult with them on several issues. Initially we
8 worked -- we partnered with them on a \$2 million grant that
9 they received from the Election Assistance Commission, the
10 federal advisory body, and we evaluated and reported on their
11 election data collection program, the program that they -- they
12 used the grant money to upgrade their system for collecting
13 election day information.

14 More recently we have been retained, I suppose is the right
15 word, to partner with them again on advising them on how they
16 might improve what they called their incident reporting system,
17 which is a system used in each ward in the state by poll
18 workers to identify and report on different events, such as
19 spoiled ballots or voters being turned away for one reason or
20 another.

21 Q Did you do some work for Voces de la Frontera unrelated to
22 this case?

23 A Yes, I did. I was asked in the summer of 2011 to provide
24 some advice to them in the process of the aldermanic
25 redistricting in the City of Milwaukee.

1 Q Are you being compensated for your work in this case?

2 A Yes, I am.

3 Q At what rate are you being compensated?

4 A \$250.

5 Q How does that compare to your standard rate?

6 A It's my standard rate.

7 Q What were you asked to do in this case? Before I ask that,
8 who were you retained by?

9 A I was retained by both Voces de la Frontera and by the
10 Baldus Plaintiffs.

11 Q Okay. So I'm going to ask you about the work that you did
12 for Voces de la Frontera. Will you describe the work that you
13 did for Voces de la Frontera.

14 A I was asked to evaluate Act 43, in particular the manner in
15 which Districts 8 and 9 had been drawn to evaluate the
16 likelihood that or the effect that the new district
17 configurations would have on the Latino community and its
18 ability to elect candidates of its choice, and also to analyze
19 data to determine whether, in my view, that Act 43 had complied
20 with the Voting Rights Act in that area of the city.

21 Q Okay. Did you receive a similar assignment from the Baldus
22 Plaintiffs in that regard?

23 A Yes, I did.

24 Q Okay. So it was basically the same work for both sets of
25 Plaintiffs?

1 A That's true. What I did is submitted one report as part of
2 the Baldus litigation and then broke out the section on
3 Districts 8 and 9, which were identical save for some minor
4 stylistic changes which I submitted as part of the Voces
5 litigation.

6 Q Okay. And did you do the same thing with regards to your
7 rebuttal report?

8 A Yes, I did.

9 Q Okay. Is Exhibit 55 an accurate copy of your report?

10 A Yes, it is.

11 Q Okay. Are there any typos or corrections?

12 A There are a couple of typos. Well, first I submitted some
13 corrected pages to correct some -- a table of core district
14 retention. There are also two typos on Page 23. One is in the
15 line -- Let's see if I can draw on this. Right here where I
16 show that the non-citizenship rate that I initially used in
17 this report was 37.75. That should actually be 35.75, although
18 the result was correct. There was also a typo which is now
19 covered by the part that I --

20 Q There's a button on your screen?

21 A Clear all. All right. So this number -- Well, that doesn't
22 work, either. Here we go. This number, 28,939, should be
23 26,939 to match that number, but other than that, it's correct.

24 Q Showing you Exhibit 60, can you identify this, please?

25 A This is my rebuttal report.

1 Q Okay. Is it accurate? Did you make any corrections in that
2 report?

3 A I don't believe so, no.

4 Q All right. Drawing your attention to Exhibit 200, could you
5 identify this exhibit, please?

6 A Yes, this is a map which shows the 1992 Assembly District 8
7 outlined in yellow overlaid with the 2002 Assembly District 8
8 which is shown in color. So it basically is an overlay of the
9 '92 and 2002 districts.

10 Q And why did you ask to have this exhibit created?

11 A I wanted to determine whether the 2002 district was
12 substantially similar in terms of core retention to the 1992
13 district.

14 Q Okay. Could you define for the Court what you mean when you
15 say "core retention?"

16 A Core retention is the percentage of the population of the
17 old district that is retained when the district lines are
18 shifted as the result of population changes and the
19 redistricting that occurs as a result of the decennial census.

20 Q Can you describe the degree of core retention that occurred
21 between the 1992 map and the 2002 map?

22 A It shows that the 2002 map is fairly close to identical.
23 The main area that was added here is a large industrial area
24 which is largely unpopulated, so there was an area here that
25 was added, and a small area here that was added, and again an

1 area that was taken out here, which again is the industrial
2 area that runs along I-94. Overall, 94 percent of the core
3 population -- of the population in the 1992 district was
4 retained in the 2002 district.

5 Q Was anything done to the 1992 district in the creation of
6 the 2002 district beyond adjusting the population requirements
7 for equalization purposes?

8 A I don't believe so.

9 Q Have you reviewed Assembly Districts 8 and 9 as they have
10 been treated under Act 43?

11 A Yes, I have.

12 Q And do you have any observations of how those districts were
13 treated under Act 43?

14 A They were both, in my view, radically reconfigured. In 2002
15 the orientation of both the 8th and the 9th was essentially
16 horizontal.

17 Q Can we get 76 up? I'm sorry. I mean 176. I'm sorry.

18 A So this shows the orientation of the 2002 8th and 9th
19 Districts. The 2002 districts are shown in color. The Act 43
20 districts are shown in yellow outline. It's quite clear that
21 the orientation of the districts were dramatically changed.
22 Instead of running north to south, they were shifted to a
23 vertical orientation and essentially split down the middle with
24 substantial populations added to the 8th District and also a
25 substantial portion of the old 8th, which was cleaved off and

1 placed or shifted into the 9th Assembly District.

2 Q Okay. Professor Mayer, why did the 8th Assembly District
3 have to change at all under Act 43?

4 A It was slightly underpopulated. It needed to add -- They
5 needed to add approximately 2,800 people.

6 Q Are you referring to Exhibit 1084?

7 A Yes, that's correct.

8 Q Put 1084 up next to 176. Thank you.

9 A So the 8th District -- The 8th District is here, and it
10 shows that it was underpopulated by approximately 2,800 people.
11 So it was necessary to add roughly that number of people to
12 bring it into acceptable compliance with the ideal district
13 population.

14 Q In order to equalize the 8th Assembly District with the
15 other -- with the 99 other assembly districts in the State of
16 Wisconsin, correct?

17 A That's correct.

18 Q And how was this achieved under Act 43?

19 A Well, in Exhibit 2 in my expert report which is noted as
20 Exhibit 5 --

21 JUDGE WOOD: I believe it's 55.

22 THE WITNESS: Fifty-five. I'm sorry.

23 BY MR. EARLE:

24 Q You are drawing our attention to Exhibit 5 of 55?

25 A Exhibit 2.

1 Q Exhibit 2. I'm sorry.

2 A So if you could highlight District 8. This shows the
3 population of the 2002 districts that was determined on census
4 day in 2010. The next column is the population shift that was
5 required to bring the district into population equality,
6 although the numbers don't have to be exact. The third column
7 here shows the actual population change that was achieved. So
8 there were 2,642 people added to the 8th. The next two columns
9 show the numbers of people who were shifted into the district
10 and then shifted out of the district, and it shows that the --
11 a net shift of 2,642 people was achieved by moving 25,590
12 people out of the existing District 8 shifting almost 23,000
13 people in the --

14 JUDGE WOOD: I think --

15 THE WITNESS: Oh, I'm sorry. 25,590 people added,
16 22,948 taken out, for a total population shift, adding up these
17 two numbers, of over 48,000. Then I calculated the ratio of
18 the population shift divided by the population change that was
19 required to produce a ratio. So I calculated that there were
20 more than 18 times as many people moved as was necessary in
21 order to achieve population equality.

22 BY MR. EARLE:

23 Q Okay. And after all is said and done with all of those
24 folks moving around, what was the core retention percentage of
25 the new 8th Assembly District under Act 43?

1 A It was roughly 55 percent.

2 Q Okay. So, in other words, approximately 45 percent were
3 new?

4 A That's correct.

5 Q Okay. Now focusing on the people who were moved out of the
6 district, okay, the 45 percent who were moved out of the old
7 8th Assembly District, what was the Latino voting age
8 population of that group?

9 A Of the people who were moved out, the Latino voting age
10 population was approximately 64.5 percent.

11 Q What was the Latino voting age population of the group that
12 was moved in, the 25,000 people who were moved in?

13 A This population was added to the south of the old 8th, and
14 it had a Latino voting age population of slightly under
15 52 percent.

16 Q Okay. What is the Latino voting age population of the 8th
17 Assembly District under Act 43?

18 A 60.54 percent.

19 Q You said 60.54 percent?

20 A That's correct.

21 Q And what was the Latino population of the old 8th Assembly
22 District, 2002 district, on census day?

23 A 65.5 percent.

24 Q So the Latino voting age population decreased?

25 A That's correct.

1 Q Okay.

2 A By 5 percentage points.

3 Q Using Exhibit 176, can you demonstrate for the judges how
4 the reconfiguration was accomplished?

5 A Again, this shows the old 8th District in red. This area
6 was moved out and shifted into the 9th, and this area was taken
7 out of the 9th and moved in, so I will just -- It was
8 essentially two roughly equivalent size populations shifted,
9 although the number of people moved in was slightly larger than
10 the number of people moved out.

11 Q What effect did this reconfiguration of the 8th Assembly
12 District have on the Latino community's ability to have a
13 reasonable opportunity to elect a candidate of choice?

14 A In my view, based on the analysis that I have done, it
15 significantly diminished that opportunity.

16 Q Okay. Are there any voter eligibility considerations that
17 would make it more difficult for the Latino community to elect
18 candidates of its choice as a result of the reconfiguration of
19 the new 8th Assembly District under Act 43?

20 A Well, there are demographics --

21 MR. KELLY: Objection. Your Honor, I don't believe
22 it's relevant and I don't believe there's been a foundation
23 laid for it.

24 BY MR. EARLE:

25 Q Did you endeavor to make a determination of whether there

1 were any voter eligibility considerations that would make it
2 more difficult for the Latino community to elect its candidates
3 of choice as a result of a reconfiguration we have on
4 Exhibit 176?

5 A Yes, I did.

6 MR. KELLY: Then I object, Your Honor, on the basis
7 that that was not included in his expert report.

8 MR. EARLE: Your Honor, I think there's a very
9 significant section in his expert report dealing with
10 citizenship and voting age percentages.

11 JUDGE STADTMUELLER: The objection is noted and
12 overruled. You may continue.

13 THE WITNESS: So the most important factor that is
14 essentially unique to the Latino community is that a
15 substantial number -- a substantial percentage of the voting
16 age population are not U. S. citizens and are, therefore,
17 ineligible to vote. There are also socioeconomic factors that
18 are not unique to the Latino community, but are associated with
19 lower turnout. I also formed an analysis that showed much
20 lower rates of voter registration among Latino voting age
21 populations than non-Latino Whites, and so those are the
22 demographic factors, but there are also factors related to the
23 orientation of the districts.

24 BY MR. EARLE:

25 Q Okay. Well, let's go back to the citizenship question,

1 okay?

2 A Okay.

3 Q Can you determine the percentage of the Latino population in
4 the 8th Assembly District who are eligible to vote on the basis
5 of citizenship?

6 A It's possible to estimate it.

7 Q Okay. And how do you go about doing that or how did you go
8 about doing it?

9 A The Census Bureau conducts a detailed survey called the
10 American Community Survey which was developed after citizenship
11 questions were dropped from the long form in the 2000 census,
12 and so the ACS is a large scale survey that does a lot of
13 things, but one of the most important purposes is that it
14 asks -- it attempts -- it estimates the number of citizens and
15 non-citizens at all different geographic aggregations down to
16 the census tract level. It's a sample that's drawn, it's not a
17 comprehensive enumeration like the census, but it is possible
18 to -- that the data that is collected by the census makes it
19 possible to make a fairly accurate estimate of the percentage
20 of voting age populations among different demographic groups,
21 including what the census calls Hispanics, and estimate the
22 percentage of the voting age population that is non-citizen.

23 Q Okay. Drawing your attention to your rebuttal report,
24 Exhibit 60, can you draw the Court's attention to that portion
25 of the report where you address the question of citizenship?

1 A The question that addresses citizenship begins on Page 10
2 and continues through the rest of the -- through Page 17.
3 There's also an exhibit, Exhibit 2, which shows my calculations
4 for the Latino voting age population concentrations, what they
5 become when one controls for the non-citizenship rate among
6 this population.

7 Q Okay. Now walk us through the database that you used and
8 what the calculations were.

9 A Well, I used two numbers. The ACS does three types of
10 surveys. They do annual surveys, they do a three-year
11 compilation of the annual surveys and then they do a five-year
12 survey, and they also produce estimates for different
13 aggregations. In my initial report I calculated a Latino
14 non-citizen rate of 35.75 percent statewide for Wisconsin
15 and --

16 Q What data was that based on?

17 A That was based on the 2008 American Community Survey, but I
18 continued to investigate because I wanted to use the five-year
19 data, which is universally considered to produce better
20 estimates, because you have five times as much data, and I also
21 wanted to limit that analysis to the geographic aggregation of
22 Milwaukee city. Using the 2006 to 2010 ACS, I was -- There is
23 a table that Census produces, these aren't my calculations,
24 they are the Census Bureau's calculations, estimated that the
25 non-citizenship rate among the Latino voting age population in

1 the City of Milwaukee was 42 percent.

2 Q Okay. And you consider that to be the more accurate rate?

3 A Absolutely.

4 Q Okay. When you apply that 42 percent based on the five-year
5 ACS data to district -- Act 43's 8th Assembly District, what
6 did you find?

7 A I found that the voting age population, once I corrected --
8 The voting age population of 60.54 percent, once you correct
9 for citizenship, as I show on the bottom of this table, which
10 is this portion, drops from 60.5 percent to 47.07 percent.

11 In doing a similar calculation for District 9, which had --
12 has a Latino voting age population of 54 percent, again
13 controlling for citizenship and removing ineligible
14 populations, that drops to 40.5 percent.

15 Q Okay. Did you make a determination of what the -- Yes, did
16 you make a determination of what the 8th Assembly District was
17 before it was redistricted?

18 A Before it was redistricted, I believe, again, controlling
19 for citizenship, the 65 percent voting age population
20 translated to, I believe, 54 percent of the citizen voting age
21 population.

22 Q Okay. And what did Act 43 do to the Latino citizen voting
23 age population of the 8th Assembly District as configured on
24 census day after all was said and done with Act 43?

25 A It reduced it from approximately 54 percent to 47 percent.

1 Q Okay. Did you look at any other voter participation issues?

2 Well, you listed several before.

3 A Yes.

4 Q Okay. Let's go to registration.

5 A Okay. In my --

6 Q That's Table 8 of Exhibit 55?

7 A That's correct.

8 Q Okay.

9 A It's possible to -- Neither the census nor the American
10 Community Survey collects or reports individually identifiable
11 data, and I was interested in determining what the registration
12 percentage was, what the registration rates were in the Latino
13 voting age population and the non-Latino White. I estimated
14 this by obtaining a voter registration list from the Government
15 Accountability Board, a portion of the Statewide Voter
16 Registration System for the City of Milwaukee. I then
17 identified -- And that last actually lists names and addresses.
18 I was able to --

19 Q So you focused on the last name?

20 A Yes. I used a technique known as surname analysis, which is
21 a widely accepted technique for identifying likely Hispanic or
22 Latino individuals. I was then able to estimate the percentage
23 of the Latino voting age population using census data in each
24 of the City of Milwaukee's -- I believe there are 313 wards,
25 and I simply calculated the percentage of that population that

1 was actually registered to vote. I did a similar calculation
2 for non-Latino Whites and then plotted those two.

3 Q This is on Table 8?

4 A Yes.

5 Q Corrected Exhibit 8?

6 A Yes.

7 MR. EARLE: Can we get that up on the screen?

8 BY MR. EARLE:

9 Q Now that seems --

10 A This is not a pretty version.

11 Q Something has happened here. I think the version in the
12 report -- The version in the exhibit is hopefully better than
13 what we have on the screen. Perhaps you could refer to the
14 table that you have in your report in front of you.

15 A Yes. So this shows a plot of each of the wards in the City
16 of Milwaukee. The X axis is Latino registration rate as
17 calculated using my analysis of the Statewide Voter
18 Registration System, and then the Y axis, the vertical axis, is
19 the non-Latino White registration rate in that same ward. The
20 45-degree line is essentially the 50/50 line. Any point that's
21 above this line shows a higher non-Latino White registration
22 rate than Latino registration rate. Any point below this shows
23 a Latino registration rate that is higher than the White
24 registration rate.

25 Q Okay. And could you explain to the Court what list you used

1 to identify the surname?

2 A Yes, there are a number of different ways of doing this. I
3 used a 1996 list that was produced by the Department of the
4 Census in one of their technical documents in which they
5 identified the 639 surnames that had shown up in the 1990
6 census as being the most likely to be Hispanic. I performed a
7 simple name match, controlling for obvious spelling errors in
8 the SVRS, and simply counted the number of people with each
9 surname that appeared in the registration list.

10 Q And what were your overall findings?

11 A Overall I found that the Latino -- citywide the Latino
12 registration rate among the voting age population was
13 26 percent. There are a few points here where, you know, here
14 where they are very high rates of Latino registration and White
15 registration, but these are all in wards with very, very small
16 Latino populations. In fact, all of them I believe have less
17 than 60 Latino voting age population in them. It's very clear,
18 just looking at -- looking here, that everywhere in the city
19 virtually non-Latino White registration rates dramatically
20 exceed the Latino registration rate. The registration rate for
21 non-Latino Whites calculated at 76 percent.

22 Q Okay. Now did you adjust that 26 percent registration rate
23 for citizenship?

24 A I did not.

25 Q Okay. If you did, what would it be? I mean, do you know?

1 A Using the 42 percent five year ACS non-citizenship rate for
2 the City of Milwaukee, the adjusted -- and everyone -- You
3 can't register, if you're not a citizen, so everyone on that
4 list is a citizen. It's necessary to reduce the denominator
5 removing those individuals who are counted in the census as
6 Latino, but are not citizens. If you do that, the registration
7 rate among the eligible Latino population is 44 percent.

8 Q And, again, this is still in comparison to the 76 percent
9 for the White community?

10 A That's correct.

11 Q Could we go to Exhibit 182, please. I guess I would now ask
12 you to address the question of turnout.

13 A It is not possible to directly observe Latino turnout,
14 because we or I didn't have access to data that would allow me
15 to attack that question. So I used the same method that I
16 used, which I'll talk about later, the racially polarized
17 voting analysis, to use a statistical technique known as
18 ecological inference to make inferences about individual
19 behavior or, in this case, making estimates about the number of
20 Latinos or percentage of Latinos who voted and based on
21 aggregate turnout vote figures at the ward level. This table
22 shows the results of this analysis for several races. For
23 purposes of this analysis --

24 Q Before you get into the actual showing the results, I mean,
25 is this technique widely accepted in your profession for this

1 purpose?

2 A Yes. The technique I used, which was developed by a Harvard
3 professor named Gary King in 1997, is considered state of the
4 art and it's widely accepted, I'd say universally accepted, as
5 the best way. There are people who have suggested some
6 improvements, but no radical changes. So this is what was most
7 widely used to make these sorts of inferences.

8 Q Okay. Proceed.

9 A And so using this method, and these are all the State
10 Superintendent of Public Instruction, the primary general,
11 Milwaukee Circuit Court primary general and the 12th Aldermanic
12 Districts, these are all districts that are low salience, low
13 turnout. The key is the Latino turnout, which is here using
14 the King ecological inference method, and it shows the Latino
15 turnout is exceptionally low and, again, this is calculated as
16 a percentage of the voting age population. It ranges between
17 2.3 percent for the February 2009 State Superintendent of
18 Public Instruction primary to a high of 5.1 percent in the 200
19 8 12th Aldermanic District general election.

20 If you compare that to the White turnout, you see in every
21 case the turnout among non-Latino Whites is significantly
22 higher, twice as high in the State Superintendent primary, four
23 times as high in the State Superintendent General, five times
24 as high in the Circuit Court primary, ten times as high in the
25 Circuit Court -- Sorry. That should be general election.

1 That's listed as primary. That should be general.

2 Approximately five and one-half or three and one-half times as
3 high in the 2008 general election in the 12th aldermanic
4 district. So this shows the turnout is dramatically higher
5 among non-Latino Whites than among Latinos.

6 Q Okay. Have you compared the turnout in the 8th Assembly
7 District to the turnout in other assembly districts around the
8 state?

9 A Yes.

10 Q And could you describe your findings, please.

11 A Using the authoritative Blue Book, I examined voting in
12 assembly district elections beginning in 1998, and it turns out
13 that in the 8th Assembly District, extending back to 1998 when
14 Judge Colon was first elected, every year, and this extends all
15 the way through 2010, in every general election for the
16 assembly, the number of votes cast in District 8 is the lowest
17 of any election district, any assembly district that year, even
18 looking at other uncontested districts.

19 The number of votes cast for Judge Colon ranged from a low
20 of perhaps 3,800 in a mid-year election to I believe over 8,000
21 in 2008, whereas the number of votes cast in an uncontested
22 assembly district in other areas easily can exceed, 10, 15,
23 sometimes 20,000. So the 8th District elections are the lowest
24 turnout elections statewide of any of the 99 assembly district
25 elections held that year.

1 Q So from 1998 to 2010 the 8th Assembly District was number 99
2 out of 99?

3 A That's correct.

4 Q Drawing your attention to -- Well, what is the significance
5 of that turnout differential as applied to the Act 43 8th
6 Assembly District?

7 A The significance is that it doesn't take much of a
8 demographic change of adding areas to the district that are --
9 that have both lower Latino populations and that have higher
10 turnouts. It doesn't take much of a change to create a
11 situation in which non-Latino Whites who turn out at far higher
12 rates and participate at far higher rates would overwhelm the
13 voting power of Latino voters in the district.

14 Q Can we put up Exhibit 185 and 184. Can you explain to the
15 judges what we have represented between these two exhibits?

16 A Would it be possible to make the legends somewhat larger?

17 Q Sure. On both of them? Do you want to start on the green
18 map first?

19 A Just start with the legends. So in Exhibit 184, this is a
20 map that shows the 2002 wards where we had election data. This
21 shows the turnout as a percentage of the voting age population
22 from the 2008 -- November 2008 election, which was a
23 presidential election, which was the highest turnout election
24 in Wisconsin in decades, and the lighter areas show areas of
25 lower turnout. This area here, which is both really the core

1 of the Latino community, corresponds to a turnout rate of
2 between 0 and 30 percent. Again, this is in a statewide
3 election where I think statewide turnout was close to
4 70 percent.

5 The darker areas show, as the shades of green get darker,
6 and, again, outside these districts these colors are correct.
7 It shows that outside these districts the turnout often
8 exceeded 60 percent. It shows that the blue is the outline of
9 the 2002 8th Assembly District, and it shows that the farther
10 south that you go, particularly in this area here, you have
11 added areas to the 8th District that are both very low
12 concentrations of Latino voters and very, very high turnout.
13 So these areas are essentially 50, 55, 60 percent or higher
14 compared to turnouts of -- which may be as low as 5 or
15 10 percent of the voting age population.

16 Let me clear that. So can we go to Exhibit 185. 185 is a
17 map of the same geographic features, the old 2002 Assembly
18 District 8, the new assembly district which is outlined in
19 black showing the Latino voting age population concentration
20 in, again, each of the 2002 wards. Again, it shows that in the
21 core of the Latino community, which is roughly there
22 (indicating), that the Latino voting age population is quite
23 high. In fact, the highest concentration, I don't know what
24 ward it is, but it has a Latino voting age population of
25 77 percent. As you move south, you can see some growth in the

1 Latino community extending south beyond the borders of the old
2 8th, but, again, this ring on the southern tip consists of an
3 area that is essentially below 40 percent concentrations of
4 Latino voting age population. In fact, where non-Latino Whites
5 have a clear majority. So what has happened is that this
6 district has had -- has been reconfigured to add an entirely
7 new population that was from the old 9th, which adds on a
8 population that is both much higher turnout and much higher
9 concentrations of non-Latino White voting age population.

10 Q What would happen if we reduced the legend and we overlaid
11 the two maps on each other? Do they correspond, the high
12 turnout rate areas and the higher White percentages of the
13 population? Can we have a solo of just that overlay? I'm
14 sorry. You had it right. There. Can we have just that map
15 that you just overlaid on the screen or do we have to have both
16 up? I'm sorry.

17 A So it's possible to overlay these areas right on top of each
18 other. The colors change a little bit because they are
19 filtered through, and what was formerly light green becomes
20 somewhat sort of a light beige, but, again, this is the core of
21 the Latino community, which is both very high concentrations of
22 Latino voting age population and very low turnout, and there is
23 a one-to-one correspondence between these areas which are both
24 much lower percentage Latino voting age population
25 concentrations and much higher turnout.

1 Q Do your findings regarding the turnout differential between
2 Latino voters and White voters have any significance for the
3 effect that Act 43 will have on the ability of the Latino
4 community to elect candidates of its choice?

5 A Yes, they do.

6 Q Can you explain.

7 A When you make all of the adjustments to the Latino voting
8 age population and account for the citizenship differentials
9 and the dramatic differences in turnouts, in this new district
10 it is quite possible, in fact, I believe it's likely that the
11 votes in just this part of the district, given turnout rates
12 that varied by as much as a factor of 10, that that could
13 simply overwhelm the voting power of the Latino community and
14 severely diminish their ability to elect a candidate of choice.

15 Q Could you now take it to Table 7 of Exhibit 55, your report.
16 Can you explain this table for us, please.

17 A This is a table showing the results of what is called a
18 racially polarized voting analysis in which, again, we can't
19 directly observe the voting behavior of Latinos and non-Latino
20 Whites, but, again, using the ecological inference technique,
21 it's possible to make -- to derive estimates of the percentages
22 of each population that voted for each candidate, and it is
23 also necessary in order to conduct this analysis that there be
24 at least one Latino candidate and one non-Latino White
25 candidate so that there are choices for both White voters and

1 Latino voters.

2 Q So does that mean that you are not able to do a racially
3 polarized voting analysis in the 8th Assembly District for
4 assembly races?

5 A Not since 1998, because there was either only one candidate
6 or only Latino candidates. There were no White candidates that
7 won who received more than a minuscule and trivial percentage
8 of the vote, which didn't permit any analysis.

9 Q So racially polarized voting in that district for those
10 races is empirically unavailable? Is that what your testimony
11 is?

12 A That's correct.

13 Q Okay. Continue.

14 A So working with the races over the last decade in which the
15 conditions were appropriate, meaning at least one Latino
16 candidate and one non-Latino candidate, this column, the
17 percentage of Latinos voting for the Latino candidate, shows
18 the estimate for exactly that, the percentage of Latino voters
19 who I estimate voted for the Latino candidate, and then this
20 column shows the estimates for the percentage of Whites who
21 vote for the Latino candidate, and in every case the
22 differences were dramatic. In fact, of these five races, in
23 four of them the Latino voters cast a supermajority of their
24 votes, ranging from 58 to 96 percent of Latinos voting for the
25 Latino candidate, whereas White voters in this race, this race,

1 this race and this race did not even cast a majority of their
2 votes for the Latino candidate. The only race where that
3 occurred was this one where 93 percent of Latino voters voted
4 for the Latino candidate and 75 percent of Whites voted for the
5 Latino candidate, and this column shows the differences, and
6 they range from a low of 18.6 percent to a high of 55
7 percentage points. Actually, these are all expressed as
8 percentage points, not as a percent of the underlying numbers.
9 I take this to -- I interpret this as evidence of a significant
10 degree of racially polarized voting.

11 Q Is this type of analysis accepted within your profession for
12 determining the factors related to racially polarized voting
13 patterns?

14 A Yes.

15 Q Is there anything significant about the Rose Fernandez race?

16 A Yes. As it happens, Rose Fernandez, who has a name that is
17 immediately recognized as Latina, is, in fact, not Latina, and
18 this raises one of the difficulties with surname analysis, that
19 no matter how long the list is or how carefully you try to
20 identify people, you are always going to get false positives in
21 which people with Latino surnames are not Latino, and you are
22 going to get some false negatives in which people with
23 non-Latino surnames, such as Earle, to pick one example, are,
24 in fact, Latino.

25 I take from that the fact that, again, this is a very low

1 salience race which didn't involve a great deal of information
2 about the candidates. It was non-partisan, so there were no
3 party cues, and so my inference from this is that Latino voters
4 in particular were taking their cue from the candidate's name.
5 They looked at it. It's, obviously, a Latino name, and you get
6 the highest level of polarized voting for that race.

7 Q So does the fact that Rose Fernandez is not Latina, in fact,
8 affect your analysis or the validity of this analysis?

9 A Well, in my view it doesn't, because it requires an
10 assumption that voters are responding to the name, which in a
11 low salience race and with such an obviously -- I believe
12 Fernandez is the 12th -- the census name that has the 12th
13 highest percentage of people with that last name identifying as
14 Latino, that that's what they were responding to in the absence
15 of other information cues, such as party.

16 Q Did your surname analysis we discussed earlier from that
17 list of 639 names, did that enter into your King's ecological
18 inference analysis of racially polarized voting in any way?

19 A No. In fact, I did not rely on surnames to even identify
20 candidates who were non-Latino or Latino. I relied on
21 information that was provided to me by informed members of the
22 community. So the surname analysis -- The only part of the
23 analysis that I did in this case that relied on surname
24 analysis is the voter registration percentages. It didn't
25 enter into anything else.

1 Q Now have you reviewed the deposition transcript of the
2 Defendant's expert, Professor Grafman, Bernard Grafman?

3 A Yes, I have.

4 Q Are you familiar with what Professor Grafman had to say
5 about your racially polarized voting analysis that you just
6 described?

7 A He criticized it.

8 Q And what was his criticism?

9 A His criticism was that I was using what he termed exogenous
10 data in doing my analysis and ignoring the best available data,
11 which in his view was the results of the assembly elections
12 from 2008.

13 Q But that analysis is not possible for the reasons you
14 testified to earlier, correct?

15 A That's correct.

16 Q Well, this best evidence issue, did you respond to it?

17 A Yes, I did. There was another element of Professor
18 Grafman's criticism, which is when the best evidence is not
19 available, what you need to do is look not at other races in
20 other areas, but focus on the results of exogenous races as the
21 second best evidence in the area of where you were attempting
22 to make estimates or make inferences about racially polarized
23 voting, and I wanted to test that and see whether he was
24 correct.

25 Q Let's get up Exhibit 198 then. Showing you what's been

1 marked as Exhibit 198, I will represent to the court that
2 Exhibit 198 is a cleaned-up version of Exhibit 1025 in terms of
3 allowing the fields to be widened so that the captions can be
4 read. Proceed.

5 A This is an analysis of voting behavior in the areas -- in
6 the wards, which were either entirely contained in the areas of
7 District 8 and 9 or mostly contained in that. So we need to go
8 to the second page of this. So, again, down the left-hand two
9 columns.

10 Q Not cleaned up so well, I guess.

11 A I can still read it.

12 Q Okay.

13 A The races that I looked at, the column that is titled
14 "Goodman's Regression" was a technique that was long used as
15 the state of the art, but it has the pretty serious flaw that
16 it frequently produces estimates of the percentage of voting
17 populations that vote for a candidate that either exceed
18 100 percent or less than 0, which is not possible. But where I
19 could calculate those, I did, just as a validity check. Again,
20 the key columns are here and here (indicating).

21 Q And you are referring to the King's ecological inference
22 columns?

23 A Yes. These two columns show estimates for the percentage.
24 This one is the percentage of Latino voters who are voting for
25 the Latino candidate, and this column is the percentage -- the

1 estimates for the percentage of White voters who vote for the
2 Latino candidate. Again, in every case but one, which is the
3 State Superintendent primary, I find -- I estimate that a
4 majority of Latino voters cast their ballot for the Latino
5 candidate, and in that one race where it's less than
6 50 percent, it's 49.8, which is very close.

7 Then if you compared these to support for the Latino
8 candidate among White voters, the percentages are always lower,
9 and this column shows the estimated differences in the -- I
10 should say the numbers in brackets are the 95 percent
11 confidence intervals in which 95 percent of the time the true
12 value of that quantity will be within that interval. So the
13 differences here range from a low of about 7 percentage points
14 for the 12th Aldermanic race in 2008 to a high of about 25
15 percentage points for the Circuit Court primary. The key to
16 determine whether -- The easiest way to determine whether these
17 differences are statistically significant is you simply look at
18 the confidence intervals to see whether it contains 0. If it
19 contains 0, you conclude that it's possible that -- possible
20 that it doesn't meet the 95 percent confidence interval, but in
21 the one case that it does exceed 0, which is minus .0005 --

22 Q You are referring to the April 1, 2008 aldermanic race
23 between Alderman Witkowiak and Angel Sanchez, is that correct?

24 A Correct. Witkowiak won that race, and there was a
25 difference of 7 percentage points, which just barely fails to

1 meet the 95 percent confidence interval. But in all the other
2 cases there are statistically significant differences between
3 the support from the Latino candidate from Latino voters
4 compared to the support for the Latino candidate among
5 non-Latino White voters.

6 Q Are the findings reflected in this Exhibit 198 consistent
7 with Table 7 of your report?

8 A Well, Table 7 -- Let me make sure we're talking about the
9 same thing. Table 7 of my report, Exhibit 55, shows the racial
10 polarization for Milwaukee County. There are two reasons, I
11 think, the results are consistent and why it was appropriate to
12 look at races in Milwaukee County.

13 The first is that the more data, the more wards that I
14 examined, the more precise my estimates will be. The second is
15 that given the overwhelming majority of Latino voting age
16 population is, in fact, concentrated in the areas of 8 and 9,
17 the analysis of the behavior of Latino voters outside of this
18 area is not going to skew the results much. The overwhelming
19 amount of weight from a statistical standpoint will still be in
20 that area. In my view the two are consistent.

21 Q Okay. Before we move into the next aspect of this, I
22 believe one of the candidates in Exhibit 198 was a candidate
23 named Peggy West?

24 A That's correct.

25 Q Is there anything significant about Peggy West?

1 A Well, Peggy West has a surname that is, obviously,
2 non-Latino and she is, in fact, Latino.

3 Q Latina.

4 A I'm sorry. My Spanish is terrible. Recognizing the
5 importance of that, if you go around the community now, her
6 campaign signs, she's running for county supervisor, I believe,
7 her campaign literature and campaign signs now say Peggy
8 Romo-West, so she's attempting to -- Well, she's using a more
9 recognizable Latina name as a way of gaining support in the
10 community.

11 Q Well, what about during the years that encompassed the data
12 that you captured in Exhibit 198?

13 A Well, in a perfect world --

14 Q I mean, did she use the Romo name?

15 A No, she did not. She ran as Peggy West.

16 Q Does that anomaly alter your findings in any way,
17 significant way?

18 A Not in a significant way, no.

19 Q So I guess to capture the data on both Table 7 and
20 Exhibit 198, does that data or do that data, I guess, reveal a
21 statistically significant correlation between the race of the
22 voter and the selection of certain candidates?

23 A Clearly it does.

24 Q Okay. And the only caveat to that is what you described
25 with regards to the aldermanic race?

1 A That's correct, and that one just barely failed to meet the
2 statistically significant -- I still regard that as
3 substantively significant.

4 Q Did the data reflected in these two exhibits reveal a
5 substantively significant difference between the voting
6 patterns of the Latino and White voters?

7 A Very much so.

8 Q Were you able to formulate a Latino majority district on the
9 near south side of Milwaukee?

10 A Yes, I was.

11 Q Well, let's go to Exhibit 6 of Exhibit 55. If you can
12 enlarge that exhibit, please. There you go.

13 A This was a notional district that I drew in an effort to see
14 whether it was possible to draw a majority-minority district
15 with a supermajority of citizen eligible Latino voting age
16 population that had the virtue of being reasonably compact and
17 contiguous and meeting all the other traditional redistricting
18 criteria. This is what the district looks like. This is not
19 an attempt to show what I think the 8th District ought to look
20 like, it's simply an attempt to demonstrate that it can be done
21 very easily to draw a district which does produce a
22 supermajority of eligible Latino voting age population.

23 Q Okay. Does this illustrative district satisfy equalization
24 criteria?

25 A Yes.

1 Q Does it satisfy traditional redistricting principles?

2 A Yes.

3 Q If you could draw your attention to Page 23 of your report,
4 Exhibit 55, and in particular there's a 60 percent Latino
5 citizen voting age population number in that report?

6 A That's correct.

7 Q Okay. Does that number reflect the more accurate 2006-2010
8 ACS citywide data?

9 A No, this is based on the 35.75 percent non-citizenship rate
10 in the one year 2008 ACS data.

11 Q Did you recalculate that statistic using the more accurate
12 five-year ACS data with the 42 percent threshold?

13 A Yes, I did.

14 Q What did that result in?

15 A It lowered the eligible voting age Latino population
16 concentration to approximately 57.4 percent.

17 Q Do you have an opinion to a reasonable degree of certainty
18 as to whether the district you have drawn in Exhibit 6 of your
19 report, whether that would provide the Latino community with an
20 equal opportunity to elect a representative of its choice?

21 A Yes, I have.

22 Q And what is that opinion?

23 A That this would.

24 Q Okay. Given the analysis you have performed, do you have an
25 opinion to a reasonable degree of certainty as to whether the

1 Latino community on the near south side in the vicinity of the
2 8th Assembly District is politically cohesive?

3 A In Act 43?

4 Q I'm sorry. Without regard to Act 43, the community as a
5 whole. I'm sorry.

6 A Of the Latino community, yes, very much so.

7 Q Would you expand on that a little bit?

8 A There are two elements to that. One is simply looking at
9 how the community is configured and the degree of geographic
10 concentration. The second is looking at the voting behavior,
11 which shows a very clear tendency to support Latina or Latino
12 candidates when they are presented with an opportunity to cast
13 their votes for such candidates. So I take that as a sign, and
14 these are -- the races that I looked at were all non-partisan.
15 These are Democratic districts, but even without those cues,
16 there's a significant degree of voting behavior that suggests a
17 very high degree of cohesiveness in terms of participation.

18 Q Okay. Thank you. Do you have an opinion to a reasonable
19 degree of certainty as to whether, given the new boundaries of
20 the 8th Assembly District under Act 43, the non-Latino voters
21 in the new 8th Assembly District vote sufficiently as a block
22 to enable them to defeat the Latino community's preferred
23 candidate?

24 A Yes, I have.

25 Q And what is that opinion?

1 A Looking at the voting behavior and the differentials in
2 turnouts, I believe they do have that ability.

3 Q Okay. Professor Mayer, were you in the courtroom when Judge
4 Pedro Colon testified earlier?

5 A Yes, I was.

6 Q Were you able to observe Exhibit 189 -- 199 and Exhibit 202?

7 A Yes.

8 Q Keeping those exhibits in minds, do you have an opinion
9 about the significance of the election results depicted in
10 these two exhibits with regards to your evaluation of the
11 impact of Act 43 on the Latino community on the near south side
12 of Milwaukee?

13 A Yes.

14 Q Okay. What is that opinion?

15 A And that is that if you look at the actual voting behavior,
16 which is even more direct evidence than any statistical
17 inferences that one can draw, you simply tally up the votes
18 that Judge Colon received in the areas of the old 8th District
19 and the areas of the new 8th District. The results are
20 apparent that he wins in the area of the old 8th District and
21 he lost in the area of the reconfigured 8th District.

22 The second point to make, if we could enlarge Exhibit 202 --

23 MR. KELLY: Your Honor, while there's a break in the
24 testimony, I object to the use of these exhibits by Dr. Mayer.
25 We have not seen these in sufficient time to have our experts

1 evaluate them. These were not produced as part of the original
2 reports and were produced probably within, I believe, the last
3 day or two. We have had no opportunity to analyze this.

4 MR. EARLE: Your Honor, I don't believe that's
5 accurate. These exhibits were produced in connection with the
6 testimony of Pedro Colon before the initial trial date and --

7 MR. KELLY: And after the date had passed for expert
8 reports and depositions and any ability for us to analyze this
9 material.

10 MR. EARLE: Your Honor, these are statistics of
11 actual results connected to the factual testimony of Judge
12 Colon, and the question is whether they are corroborative of
13 the opinions expressed by Professor Mayer.

14 MR. KELLY: This is an attempt to get a racial
15 polarization study in after the expert deadline has passed and
16 after deposition deadlines have passed, after we have had an
17 opportunity for our experts to analyze this racial polarization
18 study.

19 JUDGE STADTMUELLER: Well, if he doesn't do it with
20 Mr. Mayer, he certainly could do it with your experts, Counsel.

21 MR. KELLY: And, Your Honor, if he's limited to
22 addressing this with our expert, that would be fine, but we
23 have not had an opportunity to analyze this, nor have our
24 experts.

25 JUDGE STADTMUELLER: The documents have been out

1 there, just like the aldermanic districts, and, unfortunately,
2 this is one of the foibles of not being able to have a do-over
3 in the Legislature, so we're going to move forward. The
4 objection is noted and overruled.

5 BY MR. EARLE:

6 Q Is this the portion of Exhibit 202 that you were calling up?

7 A No, I wanted to see the turnout in here and here, so these
8 two tables (indicating). There was another point I wanted to
9 demonstrate, and that is the following: In addition to Judge
10 Colon winning in this district, that the population of this
11 table is actually larger than the population from this area,
12 because the core was 55 percent of the population, and here the
13 population reflects 45 percent of the core retention. But the
14 number of votes that were cast here is 1,413, which is
15 approximately 30 percent or 25 percent less than the total
16 number of votes that were cast in the smaller community
17 reflecting the differences in turnout that I noted.

18 It's also important to note that at the time that Judge
19 Colon ran in this district, he was, in fact, the incumbent 8th
20 Assembly District Representative. So he was essentially
21 running from the same standpoint as an incumbent would have,
22 which normally would have provided a significant advantage. So
23 there are a number of elements of this table that I think are
24 important to note about what the new configuration of the
25 district means for the Latino community's ability to elect a

1 candidate of choice, because it's clear that Judge Colon had,
2 in fact, been their candidate of choice, but that's in the old
3 district, and those comparisons, in my view, are no longer apt
4 now that the district has been so radically reconfigured.

5 Q So past electoral conduct in the 8th Assembly District with
6 regards to Judge Colon are of limited value in analyzing
7 whether the ability to elect a candidate of choice will
8 continue forward under Act 43?

9 A That's correct.

10 Q Is that like an apples and oranges paradigm?

11 A No, it's looking at what actually happened in the new
12 district. It doesn't require any fruit.

13 Q And are any of the facts related to what actually happened
14 in this race inconsistent with your analysis that you did of
15 racially polarized voting patterns and turnout patterns?

16 A No, I believe entirely consistent.

17 Q Okay. Switching gears a little bit, Professor Mayer, do you
18 have an opinion regarding whether Wisconsin's new voter photo
19 ID law will have an effect on the electoral participation on
20 the near south side of Milwaukee's Latino community?

21 A Yes, I do.

22 MR. KELLY: Your Honor, I object. This is no part of
23 the expert report. You have seen no analysis and no data on
24 this.

25 MR. EARLE: Did you address this issue in your

1 report?

2 THE WITNESS: I believe I mentioned it.

3 MR. KELLY: It was a conclusory statement that
4 contained no analysis, no supporting documentation.

5 MR. EARLE: Professor was present for deposition and
6 the Defendants had every opportunity to examine him about the
7 content of his report. They chose to ignore what was plainly
8 written in the report.

9 MR. KELLY: There was one statement in the report.
10 There was no supporting data, there was no analysis, nothing.

11 MR. EARLE: Can we call up the sentence that was
12 written in the report?

13 JUDGE STADTMUELLER: The objection is noted and
14 overruled.

15 BY MR. EARLE:

16 Q What do you base your opinion on that you wrote in your
17 report, Professor Mayer?

18 A It's based on two sets of data. One is a study that was
19 done by a man named John Klauser at the University of
20 Wisconsin-Milwaukee Employer Training Institute and was
21 published in 2005, I believe, which was an analysis of the
22 Department of Transportation database of individuals who
23 possess a current driver's license and those who possess a
24 current photo ID, and it's also based on studies that have
25 occurred in increasingly extensive literature in political

1 science that comes from other states, Indiana, Florida, Idaho,
2 that have enacted even less restrictive photo ID requirements
3 for voting.

4 Q Okay. And based on those studies, what is your -- what is
5 your opinion?

6 A That certain populations, including minority populations and
7 elderly populations, are significantly less likely to possess
8 forms of ID that would be necessary to cast a ballot in
9 Wisconsin.

10 Q That the differences are statistically significant?

11 A I can't speak to the differences in the Wisconsin study,
12 because there were no confidence intervals produced, but in
13 other studies, particularly work that's been done in Indiana,
14 the differences are statistically significant.

15 Q Okay. And do you consider those studies that you reviewed
16 to be a reliable basis to render an opinion as to the effect of
17 the Wisconsin voter photo ID law in this case?

18 A I believe it's sufficient for me to make inferences about
19 the likely impact.

20 Q Okay. Professor Mayer, do you have an opinion to a
21 reasonable degree of certainty based on the totality of the
22 circumstances whether as a result of Act 43 the Latino
23 community on the near south side of Milwaukee has less
24 opportunity than other members of the electoral to participate
25 in the political process and elect candidates of their choice

1 to the Legislature of the State of Wisconsin?

2 A Yes, I do.

3 Q And what is that opinion?

4 A In my view, Act 43 significantly diminishes those
5 opportunities.

6 Q Would you identify and discuss the factors that you have
7 taken into consideration under the totality of the
8 circumstances to arrive at that opinion?

9 A It's a function of the demographics of the reconfigured
10 districts, differences in turnout, differences in
11 participation, differences in the existence of racially
12 polarized voting, the issues pertaining to citizenship and the
13 ability of members of the Latino community to participate in
14 the political process and the manner in which Act 43 District 8
15 was drawn in a vertical orientation rather than preserving the
16 core population of the existing district.

17 MR. EARLE: Thank you, Professor Mayer. With that,
18 Your Honor, this is timed perfectly. I think I am finished
19 with my direct examination with regards to the Voces component
20 of Professor Mayer's opinion.

21 JUDGE STADTMUELLER: All right. Thank you.
22 Mr. Poland, do you have some additional questions?

23 MR. POLAND: I do, Your Honor. I plan to cover --
24 I'm not going to go back over and do anything. I plan on doing
25 the other opinions that Dr. Mayer has referenced.

1 JUDGE STADTMUELLER: All right. You may proceed.
2 We're going to go until 12:45, so everybody is aware, and for
3 the balance of the day we will be in recess from 12:45 until
4 1:45. We'll go from 1:45 until 3:45. We'll recess for 15
5 minutes. We're going to go at least until 6:00 o'clock tonight
6 beginning at 4:00 o'clock. So for counsel's planning purposes,
7 that is the schedule for the balance of the day. If we are all
8 in agreement that we can go beyond 6:00 o'clock tonight, we
9 certainly will. You may proceed, Mr. Poland.

10 DIRECT EXAMINATION

11 BY MR. POLAND:

12 Q Dr. Mayer, have you examined Act 43's configuration of
13 assembly districts with respect to Milwaukee's African-American
14 community?

15 A Yes, I have.

16 Q How many majority-minority African-American districts are
17 there in Act 43?

18 A There are six.

19 Q Could we please have Exhibit 20 up on the screen. Can you
20 zoom in on the lower, left-hand corner, please. Dr. Mayer,
21 with reference to the numbers of the districts --

22 A Is it possible to make that larger?

23 Q Dr. Mayer, with reference to the districts, can you describe
24 the percentage of African-American voting age population in
25 each of those districts?

1 A Yes. Perhaps the easiest way to do it is in the 10th, 11th,
2 16th, 17th and 18th, all of those districts have majority of
3 African-American age population of between 60.5 and roughly
4 62 percent. I think 61.8 is the largest. The 12th has an
5 African-American majority voting age population of
6 51.5 percent.

7 Q Would it be helpful for you -- I believe those percentages
8 are stipulated to. I believe we can pull that up in Paragraph
9 128 to A through F of the Pretrial Report. Can we get that on
10 the screen at the same time as the map? Dr. Mayer, can you run
11 through those numbers one more time now that we have the
12 percentages up and the map up?

13 A Sure. In the 10th the African-American voting age
14 population concentration is 61.8 percent. In the 11th it's
15 61.9 percent, almost 62. In the 12th it's 51.5. In the 16th
16 it's 61.34. Seventeenth, 61.33, and 60.43 in the 18th.

17 Q Dr. Mayer, into which set of districts do those assembly
18 districts fall?

19 A Well, the 10th, 11th and 12th fall into the 4th Senate
20 District. The 16th, 17th and 18th are in the 6th Senate
21 District.

22 Q Dr. Mayer, in your expert report, which is Exhibit 55, you
23 provided that you believed that a 60.5 to 62 percent
24 African-American population is excessive. Is that correct?

25 A That's correct.

1 Q Why is that?

2 A There say general rule of thumb, which is not iron clad, but
3 it was confirmed by Dr. Grafman in his deposition, that
4 generally a level of 55 percent is considered a minimum to
5 ensure a sufficient voting age population supermajority to
6 allow minority groups an equal opportunity to elect candidates
7 of choice. The number needs to be higher than 50 because of
8 turnout differentials and other characteristics. That while
9 citizenship is not a significant issue in the African American
10 community, other barriers, low turnout and so forth, do apply.
11 As far as I can tell, I was unable to discern what the
12 justification was for the map drawers aiming at a concentration
13 of 60.5 to 62 percent when in my view of the ability to elect
14 candidates of choice would still have been preserved with lower
15 levels of concentration, which at a minimum, if those
16 concentrations in the five assembly districts that were above
17 50 percent, above 60 percent, had been taken down even a
18 percentage point, you know, between 59 and 61, at least some of
19 that population could have been shifted into the 12th District
20 thereby raising the African-American voting age population from
21 what Dr. Grafman would consider insufficient to guarantee or to
22 protect an opportunity to elect candidates of choice to a level
23 that was closer to 55. In fact, it might have even exceeded
24 it.

25 Q Dr. Mayer, in your opinion from your analysis can you see

1 any justification for including African-American voting age
2 populations in excess of 55 percent in those five assembly
3 districts?

4 A I could not find any in the record.

5 Q Do you have any other concerns about the way that the
6 minority majority-minority African-American districts were
7 drawn?

8 A Yes, I have a particular concern with the way that District
9 12 was constructed.

10 Q And what is that?

11 A Well, we need to get a much larger -- Let's see. Can we
12 show Exhibit 235? Am I allowed to ask for that?

13 MR. KELLY: Your Honor, I'm going to object to this
14 line of questioning. This does go beyond the scope of his
15 report. This is not included in his expert report. We are
16 hearing this argument for the first time this morning.

17 MR. POLAND: We won't show that exhibit. I agreed
18 with Mr. Hodan we would not show that exhibit. We can use
19 another exhibit to show that.

20 MR. KELLY: The objection goes to Dr. Mayer's
21 testimony about what we may or may not be able to do with
22 respect to Assembly District 12 and what may or may not be
23 required to be done with respect to Assembly District 12. He
24 did not opine on that in his report.

25 JUDGE STADTMUELLER: Mr. Poland?

1 MR. POLAND: Your Honor, I think that Dr. Mayer very
2 clearly included in his report the treatment of these different
3 districts and the African-American populations in them. We can
4 pull up specifically his report, if we need to.

5 MR. KELLY: Perhaps we could see where that is in the
6 report.

7 JUDGE STADTMUELLER: Dr. Mayer, could you point us to
8 where that discussion might appear in your report or in your
9 deposition.

10 THE WITNESS: I was not asked any questions about the
11 African-American majority-minority districts in my deposition,
12 and I did include on Page 25 of my report a discussion of what
13 would happen if the concentrations in the districts that were
14 above 60 percent were reduced to 55 percent, which would
15 provide for a freed-up population of voting age population
16 African-Americans, which was part of the argument about why I
17 thought these populations were higher than -- were excessive.

18 MR. KELLY: And he mentioned --

19 JUDGE WOOD: It's actually the next paragraph, I
20 think. I don't think you are talking about that paragraph.

21 THE WITNESS: It's the last paragraph on Page 25.

22 MR. KELLY: It's mentions nothing about District 12.

23 JUDGE WOOD: It says "other districts."

24 MR. KELLY: By the way, Your Honor, I did question
25 Dr. Mayer about the African-American districts, and he never

1 said anything about District 12 there, either.

2 JUDGE STADTMUELLER: Well, such being the case, why
3 don't you start with 10, 11, 16, 17 and 18, Mr. Poland.

4 MR. POLAND: Well, we did talk about the overages in
5 those particular districts, Your Honor.

6 JUDGE WOOD: Sir, did you ever explore in the
7 deposition this question of what other districts meant?

8 MR. KELLY: I'm sorry, Your Honor?

9 JUDGE WOOD: In Line 4 of that paragraph it says
10 "other districts," and I was wondering whether in the
11 deposition the meaning of that phrase was ever explored.

12 MR. KELLY: I did. I asked him if, in the context of
13 satisfying the Gingles threshold analysis, I asked him if there
14 would be sufficient population freed up in the -- if they
15 reduced the population in the districts he identified to create
16 a seventh African-American majority-minority district as
17 alleged in the complaint, which was the complaint in this case,
18 and he said no. Having failed that, there can be no VRA
19 violation here. In fact, this is what I asked him. "Given
20 your analysis of the six African-American districts, is there a
21 large enough minority population in that area to create a
22 seventh African-American majority-minority district." He said,
23 "I don't believe there is." That's Dr. Mayer's deposition on
24 Page 193.

25 JUDGE WOOD: It's a little bit off point, but --

1 MR. KELLY: Without meeting the Gingles threshold,
2 there can be no violation of the Voting Rights Act.

3 MR. POLAND: We also have a racial gerrymandering
4 claim, Your Honors.

5 JUDGE STADTMUELLER: Well, earlier on Page 25 in the
6 single lines, actually it starts on the bottom of Page 24,
7 Dr. Mayer does include District 12, 51.5 percent, but it's not
8 discussed in the balance of the materials on Page 25, so I
9 guess for one I'm at a loss as to what the significance of that
10 is, whether that was a typographical omission in the succeeding
11 paragraphs or whether because of the difference in the
12 percentages it's significant. If you have any thought as to
13 what this is all about, Dr. Mayer.

14 THE WITNESS: Your Honor, the reason I didn't mention
15 the 12th District in the last paragraph is that I didn't
16 believe it would have made any sense to try to further reduce
17 the population of the 12th District. So it was not a
18 typographical error, it was in the context of what the
19 significance of the -- what I considered to be excessive
20 populations and what possibilities would exist if those
21 concentrations were reduced to more -- to lower levels that are
22 still regarded as generally sufficient to allow opportunities
23 to elect candidates of choice.

24 MR. KELLY: Your Honor, in that case this is a clear
25 case of sandbagging. The complaint alleges the violation of

1 the Voting Rights Act because there's a sufficient population
2 to create a seventh African-American majority-minority
3 district. Dr. Mayer testified that there's not, and he said in
4 his report that there's not.

5 JUDGE DOW: I thought I just heard counsel just say
6 that this may go for racial gerrymandering and not the Voting
7 Rights Act. Is that where you are going?

8 MR. POLAND: Yes, Your Honor.

9 JUDGE DOW: Now that that's eaten up ten minutes --

10 MR. POLAND: I had a single question that I was going
11 to ask, and Dr. Mayer was going to give a single response, I
12 believe.

13 MR. KELLY: My objection stands, Your Honor. We have
14 been sandbagged on this issue. There's no analysis at all.
15 There's a passing reference to Assembly District 12 and no
16 analysis whatsoever about the significance of that percentage.
17 Dr. Mayer presents no opinion in this section of his report
18 about what ought to be done with the effects or anything.
19 There's no analysis whatsoever. We're hearing this for the
20 first time today.

21 JUDGE DOW: Is there an analysis of this District 12
22 in the racial gerrymandering part of his report?

23 MR. POLAND: Your Honor, I don't believe we set forth
24 a separate -- We had Dr. Mayer in his report address the
25 African-American districts generally.

1 JUDGE DOW: So there's no separate reference where he
2 might have picked this up separately as to racial
3 gerrymandering?

4 MR. POLAND: We did not include a separate section on
5 racial --

6 JUDGE DOW: I don't care if it's a section, but is
7 there a discussion of it?

8 JUDGE WOOD: I don't think we should be arguing about
9 the obvious here in that 12 is 51.2 and his report says
10 55 percent is typical, and he says there's not enough for a
11 seventh district, which is precisely what the Government
12 Accountability Board has said. I don't see the harm.

13 JUDGE STADTMUELLER: Put the question to the witness
14 and let's move on.

15 BY MR. POLAND:

16 Q Yes. Dr. Mayer, do you have any other concerns about the
17 way the majority-minority African-American districts were drawn
18 specifically with respect to District 12?

19 A Yes.

20 Q And what is that?

21 A District 12, as all of the majority-minority
22 African-American districts were, they were all underpopulated,
23 which means that they all needed to add population. The
24 figures for the 12th District, I believe that it needed to add
25 approximately 2,200 people, and that population, net population

1 change, was achieved by adding nearly 28,000 people to the
2 district and subtracting 25,461. So there was a significant
3 population change that was 24 times as large as what was
4 necessary to achieve population equality, and there were two
5 characteristics of the way that District 12 was configured that
6 both had an effect, in my view, on the African-American
7 community that had previously been part of the 12th District
8 and for which I could -- I saw no justification.

9 Q And what were those, Dr. Mayer?

10 A District 12 -- The old part of District 12 included --
11 That's not a great way to put it. District 12 included this
12 little section which has a population of approximately 7,000
13 people. It has an African-American population of approximately
14 1,800, a voting age population of 1,800, and it was simply
15 carved out of the district and placed into the 22nd District,
16 which extends into Waukesha County. I have simply concluded
17 that it struck me as ranging from odd to unjustifiable how a
18 district that needed to add 2,200 people started off by carving
19 out a portion of the district that contained nearly 12 percent
20 of the population.

21 MR. KELLY: Your Honor, I will renew my objection
22 here. There is in his report no analysis of racial
23 gerrymandering. There's simply none. It does not appear.

24 MR. POLAND: Dr. Mayer very clearly in his report --

25 JUDGE STADTMUELLER: The objection is noted. The

1 answer will stand. You may proceed with your next question.

2 BY MR. POLAND:

3 Q Did you have one other effect that you noted?

4 A In District 12, yes. This area up here had not been part of
5 any of the African-American majority-minority districts, even
6 though it contains a fairly substantial African-American
7 population of about I think the voting age population
8 concentration was roughly 30 percent, perhaps a little bit
9 higher, and, again, that's a population that was -- that was
10 left in the 24th District, which places it into a district that
11 extends into Ozaukee County. Again, it struck me as strange
12 how a district that simply needed to add population of
13 4 percent underwent such a significant addition and continued
14 to leave a significant population out of the whole area.

15 Q Dr. Mayer, were any sitting legislators affected by that
16 configuration, the new configuration of 12?

17 A Yes.

18 Q Who is that?

19 A Fred Kessler, who represents the 12th and has done so since,
20 I believe, 2006. He lives right about there in the area that
21 was carved out (indicating).

22 MR. POLAND: Your Honors, if this would be -- I'm
23 about to change topics in a major way to a very different
24 subject matter, and this would be a very good place to break.

25 JUDGE STADTMUELLER: We will recess for one hour. We

1 will resume with the balance of Dr. Mayer's testimony.

2 THE BAILIFF: All rise.

3 UNITED STATES DISTRICT COURT)
4)SS
EASTERN DISTRICT OF WISCONSIN)

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10 I, KATHY A. HALMA, Official Court Reporter
11 for the United States District Court, Eastern District of
12 Wisconsin, do hereby certify that I reported the foregoing
13 proceedings and that the same is true and correct in accordance
14 with my original shorthand notes taken at said time and place.

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KATHY A. HALMA
19 Official Court Reporter
United States District Court

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